

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Philip & Marilyn Fink

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
& UBT under Article 22 & 23 of the Tax Law for the :
Years 1970 & 1972.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of January, 1982, he served the within notice of Decision by certified mail upon Philip & Marilyn Fink, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

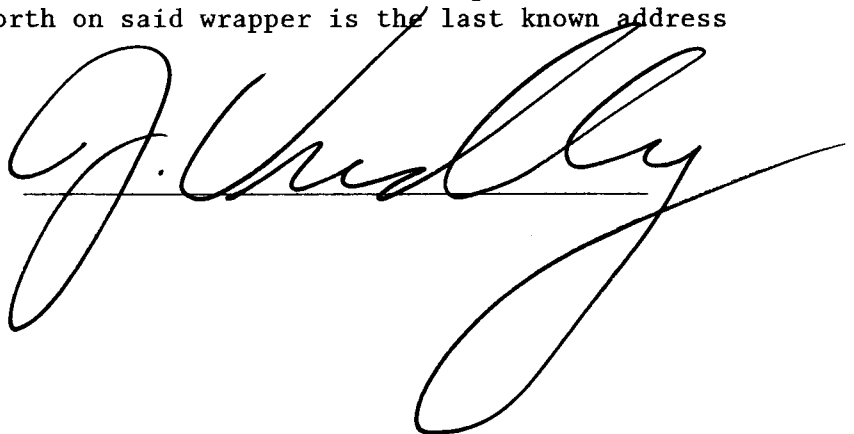
Philip & Marilyn Fink
Tully Center
Tully, NY 13159

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
29th day of January, 1982.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Philip & Marilyn Fink : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income
& UBT under Article 22 & 23 of the Tax Law for the:
Years 1970 & 1972.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of January, 1982, he served the within notice of Decision by certified mail upon Charles V. Shafer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

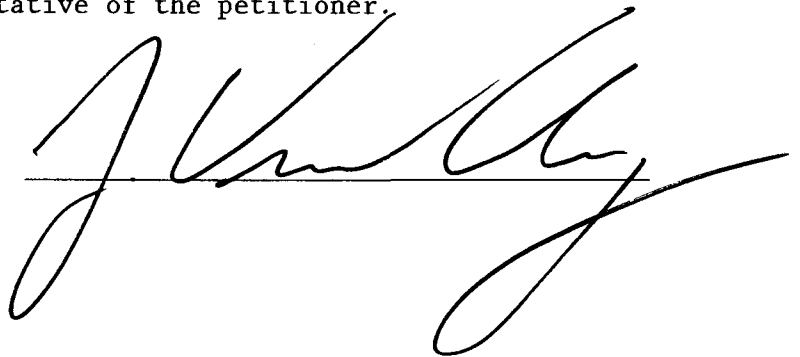
Charles V. Shafer
Box U
Tully, NY 13159

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
29th day of January, 1982.





STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 29, 1982

Philip & Marilyn Fink
Tully Center
Tully, NY 13159

Dear Mr. & Mrs. Fink:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 722 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Charles V. Shafer
Box U
Tully, NY 13159
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PHILIP FINK and MARILYN FINK	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of	:	
the Tax Law for the Years 1970 and 1972.	:	

Petitioners, Philip Fink and Marilyn Fink, Tully Center, Tully, New York 13159, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1970 and 1972 (File No. 00457).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 E. Washington Street, Syracuse, New York, on March 19, 1980 and June 10, 1980 at 9:15 A.M. and 2:45 P.M., respectively. Petitioners appeared by Charles V. Shafer, CPA and Charles E. Shafer, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the increase in the balances, in the dealer's reserve accounts, should be included as an "application of funds".

FINDINGS OF FACT

1. Petitioners, Philip Fink and Marilyn Fink, filed New York State income tax and unincorporated business tax returns for 1970, 1971 and 1972.

2. On January 28, 1974 petitioner signed a consent extending the period of limitation for personal income taxes for 1970 to December 31, 1974.

3. On December 23, 1974, based on a field audit, the Income Tax Bureau issued a Notice of Deficiency against petitioners for 1970 and 1972 asserting additional personal income tax of \$2,645.83, plus penalties pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law of \$313.52 and interest of \$453.76, less a remittance of \$488.44, for a balance due of \$2,924.67. On that same date, the Income Tax Bureau issued a Notice of Deficiency against petitioner Philip Fink for 1970 and 1972 imposing unincorporated business tax of \$1,160.00, plus penalties pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of \$118.40 and interest of \$174.45, less a remittance of \$450.29 for a balance due of \$1,002.56.

These deficiencies were based on the Income Tax Bureau's utilization of a source and application of funds method of reconstructing income, along with a cost of living analysis. The Audit Division used the increase balance in dealers reserve account as an application of funds which was attributable to a portion of the discrepancy. The Audit Division contended that an increase balance in dealers reserve account should be considered as a proper application of funds whether or not these funds were actually paid to petitioners by the credit institutions. It held this as an application of funds on the grounds that these monies should have been accrued. Based on this audit, the Income Tax Bureau found petitioners had discrepancies of \$12,121.00 and \$10,753.00 for 1970 and 1972, respectively and no change for 1971.

4. The Audit Division and petitioners stipulated to reductions in the cost of living analysis of \$1,654.00 and \$1,096.00 for 1970 and 1972, respectively.

5. During the years in issue petitioner Philip Fink was on a cash basis method of accounting and reported on a cash basis since the inception of his business of selling house trailers under the name of Latham Trailer Sales.

Petitioner reported only the actual cash received by him from the sale of house trailers. He did not report cash held by credit institutions in dealer's reserve accounts, but rather reported the actual cash received from these credit institution dealer's reserve accounts. These monies were received by petitioner as the total outstanding loan liabilities of petitioner's customers decreased.

6. The credit institutions' dealers reserve accounts increased by \$9,859.00 and \$5,487.00 for 1970 and 1972, respectively. These were the amounts the Audit Division held as an application of funds.

7. At the hearing, the Audit Division stated that petitioner received in actual payments from a dealers reserve account an additional \$1,001.00 for 1970, not originally included as source in the source portion of the Division's source and application of funds statement.

8. Petitioners contended that to consider increase balances in dealers reserve accounts as a proper application of funds would cause them to be taxed twice on the same income. Once, at the time of the increased balance in the dealers reserve account and a second time when petitioner actually received the monies from those accounts.

CONCLUSIONS OF LAW

A. That even though petitioners reported income on the cash basis, the increase in a dealer's reserve account is properly included as income and as an application of funds in a source and application of funds audit unless it is shown that said increase is not constructively received.

B. That petitioners have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that the increase in dealer's reserves was not constructively received by them in the years credited to petitioner Philip Fink's account.

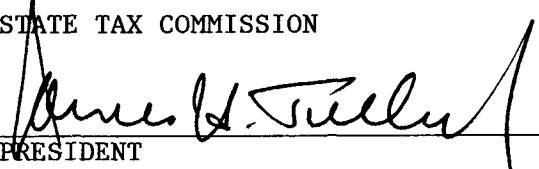
C. That the Audit Division is hereby directed to modify and recompute the notices of deficiency issued December 23, 1974 by decreasing the discrepancies by \$2,655.00 and \$1,096.00 for 1970 and 1972, respectively, in accordance with Findings of Fact "4" and "7".

D. That the petition of Philip Fink and Marilyn Fink is granted to the extent indicated in Conclusion of Law "C", and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER