

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Stephen Fisher :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Year :  
1975. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

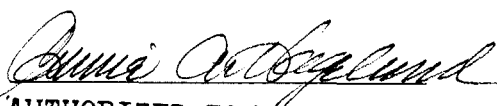
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Stephen Fisher, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

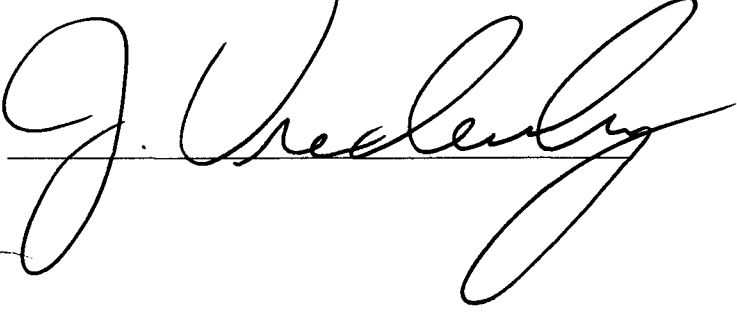
Stephen Fisher  
241 E. 75th St.  
New York, NY 10021

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  
14th day of December, 1982.

  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

December 14, 1982

Stephen Fisher  
241 E. 75th St.  
New York, NY 10021

Dear Mr. Fisher:

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 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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
STEPHEN FISHER  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Year 1975.

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DECISION

Petitioner, Stephen Fisher, 241 East 75th Street, New York, New York 10021, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1975 (File No. 25891).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 19, 1982 at 9:15 A.M. Petitioner, Stephen Fisher, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (James F. Morris, Esq., of counsel).

ISSUE

Whether petitioner had filed a 1975 New York State personal income tax return prior to March 21, 1980.

FINDINGS OF FACT

1. On May 2, 1978 the Audit Division issued a Statement of Audit Changes to Stephen Fisher (hereinafter petitioner) and his wife, Nancy Fisher, wherein their 1975 personal income tax liability was computed from information obtained from the Internal Revenue Service. Such method was used to determine their tax liability since no reply was received to two inquiry letters previously sent by the Audit Division. Accordingly, a Notice of Deficiency was issued on August 10,

1978 asserting personal income tax of \$4,485.09, plus penalties and interest of \$2,454.47, for a total due of \$6,939.56. Said penalties were asserted pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to file a 1975 return and failure to pay the tax determined to be due respectively.

2. On March 21, 1980 petitioner submitted a photostatic copy of his (and his wife's) New York State Combined Income Tax Return for the year 1975 with copies of three wage and tax statements attached thereto. The Audit Division maintains that said copy represents the initial filing for 1975.

3. On May 13, 1980 the Audit Division issued a Statement of Personal Income Tax Audit Changes for the years 1975 through 1978 wherein petitioner's 1975 tax liability was recomputed to conform to the copy of his return submitted on March 2, 1980. Pursuant to said statement, petitioner's revised tax liability for 1975 was determined to be \$659.89 plus applicable penalties and interest. During the hearing the Audit Division concurred that the revised tax liability of \$659.89 is the amount currently at issue herein.

4. Although petitioner argued that taxable years 1976, 1977 and 1978 should additionally be heard, the issue herein was restricted to 1975. Since no notices of deficiency were issued for said other years, no jurisdiction existed for inclusion of such years in the instant proceeding.

5. Petitioner did not contest the revised tax liability for 1975 of \$659.89. However, he argued that he was due a refund for 1977 of \$1,301.10 which was never received and that said refund should properly be applied to the deficiency computed for 1975.

6. Petitioner argued that he filed a 1975 return prior to the submission of his copy, which was received by the Audit Division on March 21, 1980. The

date such return was allegedly filed is not determinable since based on conflicting statements in the hearing record, petitioner claimed to have filed:

a) eighteen (18) months prior to receipt by the Audit Division of his copy (which would render a claimed filing date of approximately September 21, 1978), and

b) on January 13, 1979.

Petitioner, however, did acknowledge that he did not file a timely return for 1975.

CONCLUSIONS OF LAW

A. That petitioner, Stephen Fisher, has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he had filed a 1975 personal income tax return prior to March 21, 1980. Accordingly, said date is determined to be the initial date of filing.

B. That petitioner's tax liability for 1975 is \$659.89 plus applicable penalties and interest.

C. That the petition of Stephen Fisher is granted to the extent provided in Conclusion of Law "B" supra, and except as so granted, said petition is in all other respects denied.

D. That the Audit Division is hereby directed to adjust the Notice of Deficiency dated August 10, 1978 to be consistent with the decision rendered herein.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

AROWE

NIN

Stephen Fisher  
241 E. 75th St.  
New York, NY 10021

*[Handwritten signature]*  
12/14/82

CERTIFIED

P 230 844 282

MA

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

December 14, 1982

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STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
STEPHEN FISHER  
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DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

*Robert A. Buchanan*  
\_\_\_\_\_  
ACTING PRESIDENT  
*Frank R. Koenig*  
\_\_\_\_\_  
COMMISSIONER  
*[Signature]*  
\_\_\_\_\_  
COMMISSIONER