

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Karl W. Lanks

:

:

AFFIDAVIT OF MAILING

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 and Chapter 46, :
Title T of the Administrative Code of the City of :
New York for the Year 1977. :

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 27th day of May, 1982, he served the within notice of Decision by certified mail upon Karl W. Lanks, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

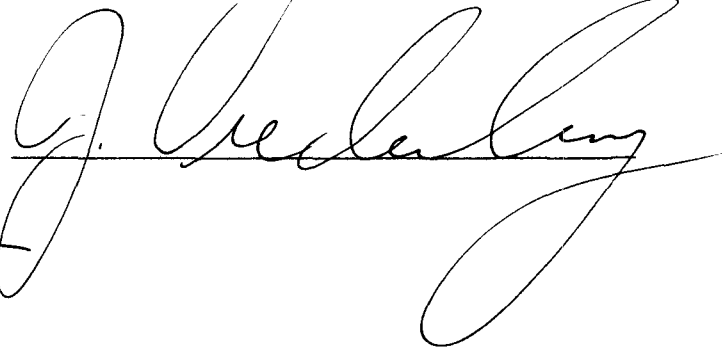
Karl W. Lanks
450 Clarkson Ave., Box 25
Brooklyn, NY 11203

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
27th day of May, 1982.





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

May 27, 1982

Karl W. Lanks
450 Clarkson Ave., Box 25
Brooklyn, NY 11203

Dear Mr. Lanks:

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 & 1312 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

In the Matter of the Petition	:	
of	:	
KARL W. LANKS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York for	:	
the Year 1977.	:	

Petitioner, Karl W. Lanks, 450 Clarkson Avenue, Brooklyn, New York 11203, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File No. 26946).

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 June 16, 1981 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner, a shareholder in a professional corporation, must add to his Federal adjusted gross income, the amount of taxes paid by the corporation for old age, survivors and disability insurance on his compensation.

FINDINGS OF FACT

1. Petitioner, Karl W. Lanks, timely filed a New York State Income Tax Resident Return (with New York City Personal Income Tax) for the year 1977, whereon he reported wage income from Downstate Pathology Associates, P.C., a professional service corporation of which he was a shareholder.

2. On March 26, 1979, the Audit Division issued a Statement of Audit Changes to petitioner wherein it stated that:

"The modifications required to be made by a shareholder of a professional corporation in determining New York adjusted gross income, pursuant to section 612(b)(7), (8) and (9) of the New York Tax Law were omitted or incorrect."

Based on the above, adjustments pursuant to sections 612(b)(7) and 612(b)(8) of \$1,999.00 and \$816.75, respectively, were made with respect to both New York State and New York City personal income taxes. Said amounts were reported on a New York State Professional Service Corporation Information Return which was filed by the professional corporation. Accordingly, a Notice of Deficiency was issued against petitioner on April 11, 1979 asserting additional New York State personal income tax of \$422.36, additional New York City personal income tax of \$121.08, plus interest of \$45.56, for a total due of \$589.00.

3. Petitioner conceded the adjustment made pursuant to section 612(b)(7) of the Tax Law at the hearing held herein.

4. Petitioner argued that he should not be required to make the modification provided for in section 612(b)(8) of the Tax Law since the maximum contribution to his FICA account was made by a second employer and accordingly, any additional contributions were not credited to his FICA account, thereby affording him no benefit from those contributions made by the professional corporation.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Chapter 46, Title T.

B. That section 612(b)(8) of the Tax Law provides that:

"There shall be added to federal adjusted gross income -- In the case of a taxpayer who is a shareholder of a corporation organized under article fifteen of the business corporation law, the amount which is required to be paid as a tax by such corporation pursuant to section thirty-one hundred eleven (a) of the internal revenue code with respect to wages of such taxpayer for the calendar year ending in or with such taxpayer's taxable year."

Accordingly, petitioner is required to add to his Federal adjusted gross income, the amount of taxes paid by the corporation for old age, survivors and disability insurance on his compensation.

C. That the petition of Karl W. Lanks is denied and the Notice of Deficiency dated April 11, 1979 is sustained together with such additional interest as may be lawfully owing.

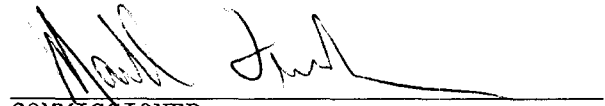
DATED: Albany, New York

MAY 27 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER