

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Clifford A. Martin
and Rita J. Martin

:

:

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 for the Year :
1974. :

State of New York
County of Albany

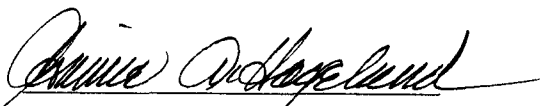
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of October, 1982, he served the within notice of Decision by certified mail upon Clifford A. Martin, and Rita J. Martin the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

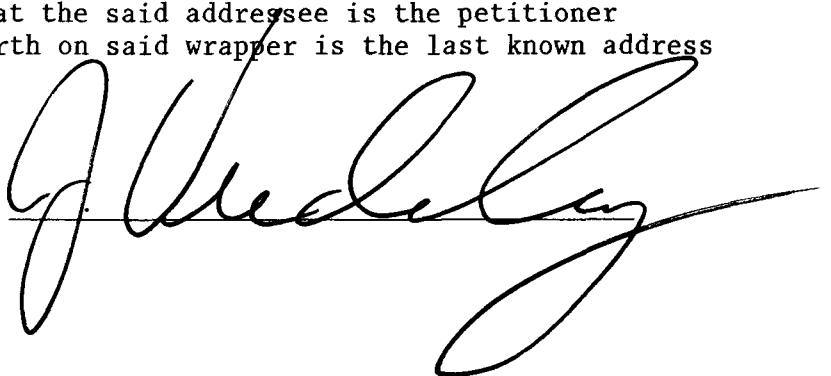
Clifford A. Martin
and Rita J. Martin
66 S. Fairgrounds Rd.
Hamburg, NY 14075

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
12th day of October, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Clifford A. Martin :
and Rita J. Martin :

AFFIDAVIT OF MAILING

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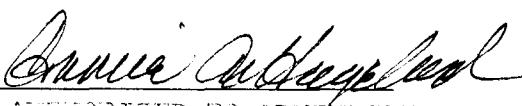
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of October, 1982, he served the within notice of Decision by certified mail upon Charles W. Mayo the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

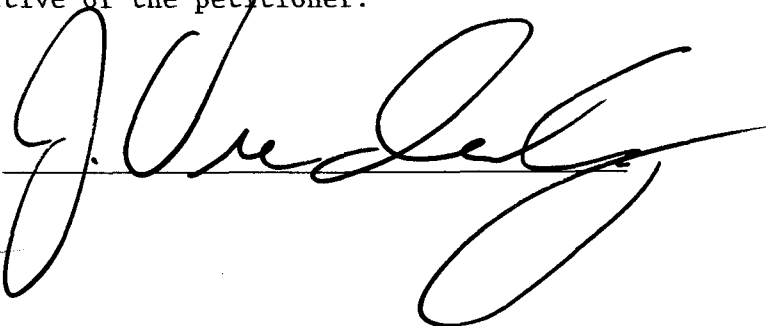
Charles W. Mayo
120 Delaware Bldg.
Buffalo, NY 14202

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
12th day of October, 1982.


ANNE M. HYNES
CLERK OF THE COMMISSION
SECTION 172



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

October 12, 1982

Clifford A. Martin
and Rita J. Martin
66 S. Fairgrounds Rd.
Hamburg, NY 14075

Dear Mr. & Mrs. Martin:

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
Charles W. Mayo
120 Delaware Bldg.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CLIFFORD A. MARTIN and RITA J. MARTIN	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioners, Clifford A. Martin and Rita J. Martin, 66 South Fairgrounds Road, Hamburg, New York 14075, 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 1974 (File No. 23433).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on December 16, 1981 at 10:45 A.M. Petitioners appeared by Charles W. Mayo, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

ISSUE

Whether the copy of the cancelled check presented by petitioners was used in payment of the balance due on the petitioners' New York State Income Tax Return.

FINDINGS OF FACT

1. The Audit Division received information from a Federal/State computer tape match indicating that, for the year 1974, Clifford A. Martin and Rita J. Martin had filed a joint Federal income tax return. Since there was no record of a State return being filed for the year 1974, the Audit Division issued a letter requesting information about their 1974 income tax return.

2. On November 3, 1976, the petitioners sent the Audit Division a copy of New York State Combined Income Tax Return for 1974 reporting withholding tax of \$1,377.66 and a balance due of \$249.64. Copies of the New York State Wage and Tax Statements were not attached.

3. On April 25, 1978, the Audit Division issued a Statement of Audit Changes for 1974 against the petitioners on the grounds, "[s]ince you failed to reply to our two previous letters, the claimed amount of New York State taxes withheld have been disallowed." Also, "[p]enalties have been assessed for late filing and payment of the tax due." Accordingly, two Notices of Deficiency were issued by the Audit Division on August 10, 1978 against the petitioners. One Notice of Deficiency was issued against Clifford A. Martin for 1974 in the amount of \$1,253.27 in personal income tax, plus penalty and interest. The second Notice of Deficiency was issued against Rita J. Martin for 1974 in the amount of \$374.00 in personal income tax, plus penalty and interest.

4. Petitioners contended that they had timely filed the New York State Combined Income Tax Return for 1974 and paid the balance due.

5. At the time of the hearing, there was only a photocopy of the face and a microfilm copy of the back of the alleged check paid with the New York State Combined Income Tax Return for 1974. The petitioners contended that the original cancelled check was given to the Audit Division as proof.

6. The photocopy of the face of the alleged check did not show the markings normally stamped on the face of the check by the Department of Taxation and Finance. The amount written in to be paid (\$249.64) was not consistent with the amount paid (\$375.00) by the bank.

7. At the hearing, petitioners presented withholding tax statements. The Audit Division stipulated that the tax due be reduced by \$1,060.26 and \$317.40 for Clifford A. Martin and Rita J. Martin, respectively.

CONCLUSIONS OF LAW

A. That petitioners, Clifford A. Martin and Rita J. Martin, have failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, in establishing that the copy of the cancelled check was used to pay the balance due on their New York State Income Tax Return.

B. That petitioners are properly entitled to a deduction of the tax due by the amount of withholding tax stipulated in Finding of Fact "7".

C. That the penalties imposed by sections 685(a)(1) and (a)(2) of the Tax Law are sustained, since petitioners have not shown that their failure to file a tax return and to pay the tax shown was due to reasonable cause.

D. That the Audit Division is hereby directed to modify the Notices of Deficiency dated August 10, 1978 to be consistent with the decision rendered herein. That the petition of Clifford A. Martin and Rita J. Martin is granted to the extent provided in Conclusion of Law "B", supra, and that said petition is, in all other respects, denied.

DATED: Albany, New York

OCT 12 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER