

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

MICHAEL ALEXANDER  
SECRETARY  
Telephone: (518) 457-6162

December 24, 1982

Thomas & Edna McCarthy  
220 East 201st St.  
Bronx, NY 10458

Dear Mr. & Mrs. McCarthy:

Please take notice of the Default Order of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 1312 & 690 of the Tax Law, any proceeding in court to review this decision must be commenced within 4 months from the date of this notice.

Inquires concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the undersigned.

Very truly yours,

MICHAEL ALEXANDER  
SECRETARY TO THE  
STATE TAX COMMISSION

cc: Petitioner's Representative  
Thomas F. O'Brien  
221 East 201st St.  
Bronx, NY 10458  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Thomas & Edna McCarthy : DEFAULT ORDER  
: 82-P-39  
for Revision or for Refund of Personal Income Tax :  
under Article(s) 22 of the Tax Law for the Years :  
1976 & 1977. :

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Petitioner(s) Thomas & Edna McCarthy filed a petition for revision or for refund of Personal Income Tax under Article(s) 22 of the Tax Law for the Years 1976 & 1977. File No. 34179

Under Section 601.5 of the State Tax Commission Rules of Practice and Procedure, a notice was served on the petitioner(s) to file a perfected petition. Notice to file the perfected petition was sent to the petitioner(s) last known address. Petitioner(s) failed to file a perfected petition. A default has been duly noted.

Now on motion of the Secretary to the State Tax Commission, it is

ORDERED that the petition of Thomas & Edna McCarthy be and the same is hereby denied.

DEFAULT ORDER  
ADOPTED BY THE STATE TAX COMMISSION  
ALBANY, NEW YORK  
DECEMBER 24, 1982

January 20, 1983

Thomas F. McCarthy, Esq.  
220 East 201st Street  
Bronx, New York 10458

RE: THOMAS & EDNA MCCARTHY  
82-P-39

Dear Mr. McCarthy:

This is to acknowledge receipt of your letter of  
January 5, 1983.

Your motion to vacate the default order issued  
December 24, 1982 for failure to file a perfected petition  
is granted upon condition that you file a perfected  
petition within 45 days from the date of this letter.

Perfected petition forms are enclosed for your  
convenience.

Sincerely,

MICHAEL ALEXANDER  
Secretary to the State Tax Commission

MA:mac

Enc.

cc: Aloysius Nendza, Assistant Director  
Tax Appeals Bureau

THOMAS F. MC CARTHY  
COUNSELOR AT LAW

220 EAST 221ST ST.  
203 EAST FORDHAM ROAD  
BRONX, N. Y. 10458

January 5, 1983

Department of Taxation & Finance  
Michael Alexander, Secretary  
State Tax Commission  
State Campus  
Albany, New York 12227

Re: Default Order 82-P-39

C.M.R.R.R. #213558

Dear Sir:

Replying to your Notice dated December 24, 1982 to the effect that the enclosed Default Order in reference to the petition of myself and Mrs. McCarthy for the revision of our joint return for the years 1976 and 1977 (File #34179) was adopted by the Commission December 24, 1982, I must advise you that there is no basis in fact whatsoever for this order nor for the decision on which it is apparently based.

More specifically, the order states "Under Section 601.5 of the State Tax Commission Rules of Practice and Procedure, a notice was served on the petitioners to file a perfected petition. Notice to file the perfected petition was sent to the petitioners' last known address. Petitioners failed to file a perfected petition. A default has been duly noted". The fact is that the taxpayers never received from you or any employee of the Commission at any time a Notice pursuant to the provisions of said Section 601.5 to file the perfected petition. Nor were any forms therefor received by the taxpayers. As the above quoted alleged statements constitute the sole basis for the decision and order, the order is a mistake and should not have been granted.

A short review of the proceedings herein following the filing of the petition in June 1981 will show that pursuant to a notice from the conferee for a pre-hearing conference in the Bronx office, a meeting was had on March 18, 1982, at which the undersigned appeared with all of his pertinent records but was unable to develop the beginning of a discussion with the conferee in an attempt to determine exactly what issues were embraced in the controversy and as to what positive steps might be then taken to resolve them. On the other hand, I was given to understand by the conferee that the meeting was adjourned sine die, and that a hearing on notice would later be set for the matter in the Manhattan office of the Commission. No such notice or hearing was ever afforded the taxpayers, who were thereby denied any opportunity to be heard on the record.

Under the foregoing circumstances the default order should be annulled and the proceedings promptly reinstated so that the taxpayers' right to a hearing can be had as provided by the Tax Law.

I believe this solution would be proper and simple and result in a resolution and settlement of this controversy.

Please advise promptly.

Respectfully yours,  
*Thomas F. McCarthy*  
Thomas F. McCarthy

