

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Mark A. Niven

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Year 1976.

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 11th day of February, 1982, he served the within notice of Decision by certified mail upon Mark A. Niven, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mark A. Niven
114 Van Cortlandt Ave. W.
Bronx, NY 10463

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
11th day of February, 1982.

James P. Hagellund

J. Vredenburg

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

February 11, 1982

Mark A. Niven
114 Van Cortlandt Ave. W.
Bronx, NY 10463

Dear Mr. Niven:

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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

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	:	
MARK A. NIVEN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Articles	:	
22 and 30 of the Tax Law for the Year 1976.	:	

Petitioner, Mark A. Niven, 114 Van Cortland Avenue West, Bronx, New York 10463, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Articles 22 and 30 of the Tax Law for the year 1976 (File No. 26553).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 24, 1981 at 2:45 P.M. Petitioner, Mark A. Niven, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq. of counsel).

ISSUE

Whether petitioner's claimed deductions for interest expense, contributions and exemptions were properly substantiated.

FINDINGS OF FACT

1. Petitioner, Mark A. Niven, filed a New York State Income Tax Resident Return for 1976, on which he deducted interest expense of \$1,131.00, contributions of \$485.00 and claimed exemptions for his two children and his brother.

2. On February 15, 1979, the Audit Division issued a Notice of Deficiency against petitioner asserting personal income tax of \$688.43, plus interest of \$97.95, for a total of \$786.38. The Notice of Deficiency was based on a

Statement of Audit Changes, issued on July 26, 1978, which held that petitioner failed to submit requested documents to substantiate the following claimed deductions, and, therefore were disallowed.

<u>ITEM</u>	<u>CLAIMED</u>	<u>ALLOWED</u>	<u>ADJUSTMENT</u>
Interest Expense	\$1,131.00	-0-	\$1,131.00
Contributions	485.00	-0-	485.00
Exemptions (3)	1,950.00	-0-	<u>1,950.00</u>
Total Adjustments			<u>\$3,566.00</u>

3. At the hearing, the Audit Division submitted in evidence an examiner's worksheet dated July 26, 1978, which recomputed the petitioner's tax liability for subject year based on additional data which he submitted, as follows:

	<u>PER RETURN</u>	<u>PER AUDIT</u>	<u>ADJUSTMENTS</u>
Interest Expense	\$1,131.00	\$ 270.00	\$ 861.00
Contributions	485.00	-0-	485.00
Exemptions (3)	1,950.00	1,950.00	<u>-0-</u>
Total Adjustments			\$ 1,346.00
Taxable Income Shown On Return			<u>23,980.00</u>
Corrected Taxable Income			<u>\$25,326.00</u>
		<u>NYS INCOME TAX</u>	<u>NYC INCOME TAX</u>
Tax On Corrected Taxable Income		\$2,108.90	\$ 689.02
Tax Surcharge 2½%		52.72	<u>-0-</u>
		<u>\$2,161.72</u>	\$ 689.02
Less: Tax Shown On Return		<u>1,965.00</u>	<u>634.00</u>
Additional Personal Income Tax Due		\$ 196.72	\$ 55.02
Total New York State & City Income Taxes Due			<u>\$251.74</u>

4. The Audit Division and the petitioner stipulated that the additional tax due from petitioner for 1976 is \$251.74, as shown in Finding of Fact "3".

CONCLUSIONS OF LAW

A. That petitioner, Mark A. Niven, substantiated interest expense, contributions and exemptions as found in Findings of Fact "3", supra.

B. That the Audit Division is hereby directed to modify the Notice of Deficiency dated February 15, 1979, to be consistent with the Conclusions of Law determined herein; and that, except as so granted, the petition is in all other respects denied. That the Notice of Deficiency, as modified, is sustained, together with such interest as may be legally due.

DATED: Albany, New York

FEB 11 1982

STATE TAX COMMISSION

James W. Truitt
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. J. J. J.
COMMISSIONER