

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Simon Present	:	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	:	
1971.	:	

State of New York
County of Albany

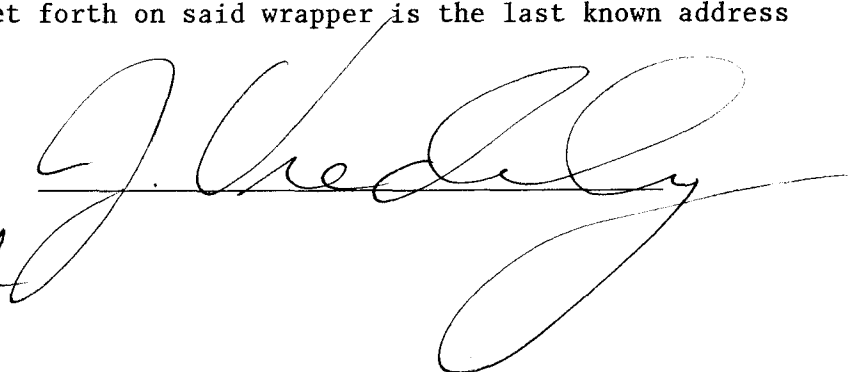
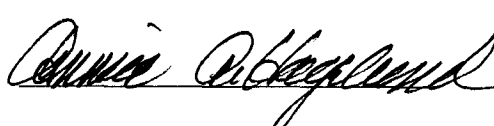
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of June, 1982, he served the within notice of Decision by certified mail upon Simon Present, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Simon Present
507 St. Andrews Rd.
Hollywood, FL

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 June, 1982.

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Simon Present :
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 :
1971 :

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 June, 1982, he served the within notice of Decision by certified mail upon Howard B. Present the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

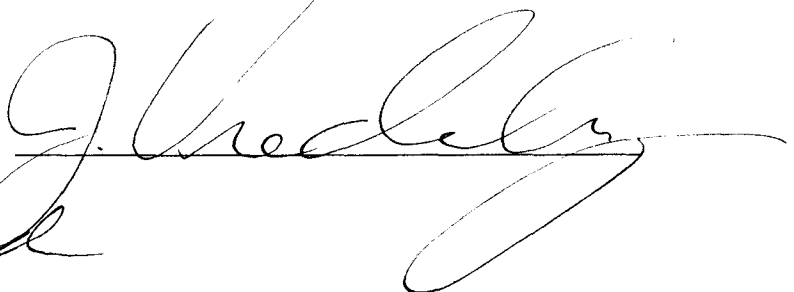
Howard B. Present
55 Liberty St.
New York, NY 10005

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
11th day of June, 1982.





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

June 11, 1982

Simon Present
507 St. Andrews Rd.
Hollywood, FL

Dear Mr. Present:

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
Howard B. Present
55 Liberty St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SIMON PRESANT	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1971.	:	

Petitioner, Simon Present, 507 St. Andrews Road, Hollywood, Florida, 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 1971 (File No. 15907).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 28, 1977 at 9:15 A.M. Petitioner appeared by Howard B. Present, Esq. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner was mailed a timely Notice of Deficiency for personal income tax for 1971 and, if so, whether it was mailed to his last known address.

II. Whether the State Tax Commission has jurisdiction to review the petition of Simon Present.

FINDINGS OF FACT

1. Petitioner, Simon Present, received his first communication from New York State taxing authorities, with respect to his 1971 New York State tax return, in a letter dated August 19, 1974. The letter informed petitioner that

the taxing authorities had no record of receiving his 1971 New York State return. The letter was addressed to "40 Curely Street, Long Beach, New York." Petitioner responded to said letter on September 3, 1974 enclosing a copy of the 1971 return dated June 15, 1972.

2. Petitioner was mailed a Notice of Deficiency for 1971 by certified mail on March 31, 1975. The Notice was addressed to 1528 Rodman Street, Hollywood, Florida, that being the address noted on petitioner's 1973 New York nonresident tax return. No prior correspondence had been had as to any items of income or deductions with respect to petitioner's 1971 return.

3. Subsequent to the filing of his 1973 return, but before the mailing of the Notice of Deficiency, petitioner moved from 1528 Rodman Street, Hollywood, Florida, to 507 St. Andrews Road, Hollywood, Florida. Petitioner notified the Post Office to forward his mail to the new address.

4. Petitioner's Notice of Deficiency, mailed to 1528 Rodman Street, Hollywood, Florida, was not forwarded to his new address. The Post Office returned the envelope, marked "unclaimed" and "return to sender from Hollywood, Florida" with the Notice to the New York State Tax Commission. Said envelope was postmarked March 31, 1975, and was labeled certified No. 28393.

5. After September 18, 1975, petitioner, received a letter of that date from the State Tax Commission addressed to "40 Curley (sic) Street, Long Brach (sic), New York", with respect to a review of his 1971, 1972, and 1973 tax returns.

6. Petitioner received notification of the Notice of Deficiency shortly after October, 1975, when the Tax Commission remailed a Notice and Demand to 507 St. Andrews Road, Hollywood, Florida. Said notice was previously addressed to 1528 Rodman Street. No Notice of Deficiency was received by petitioner within the ninety-day period subsequent to March 31, 1975.

7. Petitioner filed a petition in response to the Notice and Demand asserting that no Notice of Deficiency was sent to his last known address and that the statute of limitations therefor had expired.

8. Petitioner also contended that the Audit Division must prove that the Notice of Deficiency was sent by certified mail. The Tax Department's postal listing sheet, dated March 31, 1975, showed that an envelope, addressed to petitioner at 1528 Rodman Street, Hollywood, Florida, was mailed "certified" and that the year 1971 was listed.

9. Petitioner's 1974 tax return, filed after the mailing of the March 31, 1975 Notice of Deficiency, showed an address of 507 St. Andrews Road, Hollywood, Florida.

10. Petitioner testified that he did not notify the New York Tax Department or the Income Tax Bureau of his change of address when he moved from 1528 Rodman Street, Hollywood, Florida.

CONCLUSIONS OF LAW

A. That petitioner's correspondence with the State Tax Commission, which did not clearly indicate a change of address, was insufficient to constitute notice (within the meaning of section 691(b) of the Tax Law) to the Tax Commission of any change in petitioner's address, subsequent to the filing of his 1973 New York nonresident tax return.

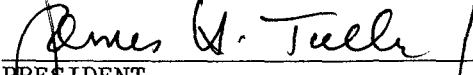
B. That the Notice of Deficiency mailed to petitioner Simon Present by certified mail on March 31, 1975, was properly and timely mailed to his last known address at 1528 Rodman Street, Hollywood, Florida; therefore, this was petitioner's last known address within the meaning and intent of section 691(b) of the Tax Law.

C. That the petition of Simon Presant was not filed within the ninety days provided for by sections 681(b) and 689(b) of the Tax Law; therefore, the State Tax Commission lacks jurisdiction to review the Notice of Deficiency issued March 31, 1975; therefore, said Notice is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

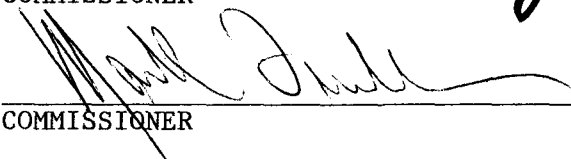
JUN 11 1982



PRESIDENT



COMMISSIONER



COMMISSIONER