

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leroy H. Villnave :
and Sandra Villnave : AFFIDAVIT OF MAILING
:
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
& UBT under Article 22 & 23 of the Tax Law for the :
Years 1974 & 1975. :

State of New York
County of Albany

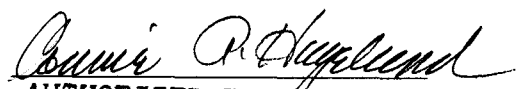
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Leroy H. Villnave and Sandra Villnave the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

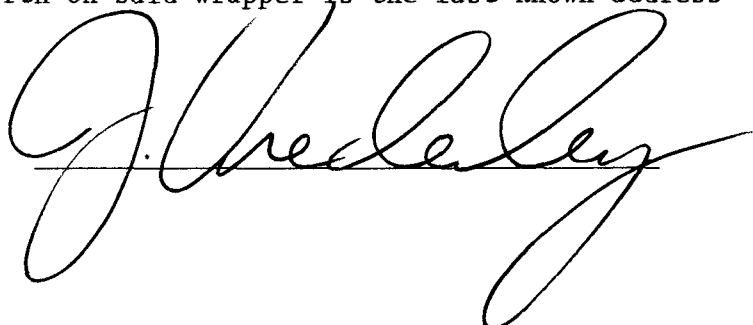
Leroy H. Villnave
and Sandra Villnave
Box 304
Brushton, NY 12916

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
14th day of December, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 14, 1982

Leroy H. Villnave
and Sandra Villnave
Box 304
Brushton, NY 12916

Dear Mr. & Mrs. Villnave:

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 & 722 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	:	
LEROY H. and SANDRA VILLNAVE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of the	:	
Tax Law for the Years 1974 and 1975.	:	

Petitioners, LeRoy H. and Sandra Villnave, Box 304, Brushton, New York 12916, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1974 and 1975 (File No. 21684).

On June 6, 1981 petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission upon the entire record contained in the file. After due consideration of said record, the State Tax Commission renders the following decision.

ISSUE

Whether the Audit Division's bank deposit analysis audit, which included a figure for cash living expenses of \$5,000.00 for each year under audit, was incorrect.

FINDINGS OF FACT

1. Petitioners, LeRoy H. and Sandra Villnave, timely filed New York State personal income tax returns for 1974 and 1975. Attached to each return were New York State Unincorporated Business Tax Returns and copies of Federal Schedule "C", Profit or (Loss) From Business or Profession. Petitioner LeRoy Villnave operated a service station during the years at issue.

2. On December 19, 1977, the Audit Division issued a Notice of Deficiency against the petitioners for 1974 and 1975 asserting personal income tax of \$291.40, negligence penalty under section 685(b) of the Tax Law of \$14.57, plus interest. On the same date the Audit Division issued a Notice of Deficiency against petitioner LeRoy Villnave for 1974 asserting unincorporated business tax of \$123.74, negligence penalty under section 685(b) of the Tax Law of \$6.19, plus interest. The notices of deficiency were based upon statements of audit changes which, as a result of a bank deposit analysis audit, proposed additional income of petitioners for each year in question.

3. The Audit Division's bank deposit audit reflected an understatement of petitioners' income. Petitioners claimed that the understatement was the result of deposits of Social Security payments and transfers from savings to Sandra Villnave's checking account. The Audit Division allowed the Social Security payments as non-taxable income but requested verification of the transfers from savings. Petitioners did not submit any credible documentary evidence to verify the transfer of funds from savings. They claimed that they lost the savings account passbook and they would not obtain information from the bank because the bank charges for the information.

4. Petitioners objected to the Audit Division including \$5,000.00 for 1974 and \$5,000.00 for 1975 for cash living expenses in the bank deposit analysis. The Audit Division added the funds to the analysis because an examination of petitioner's cancelled checks showed only a small amount expended for living expenses. The audit concluded that petitioners income was understated by \$9,542.78 for 1974 and \$8,345.32 for 1975.

5. Petitioners have not submitted any additional evidence to show the audit was incorrect. Petitioners argued that the Audit Division "prepared" an income rather than accept their actual income as reported on the returns filed.

CONCLUSIONS OF LAW

A. That the Audit Division is not bound to accept the figures on the petitioners' return as correct. Section 697(b) of the Tax Law provides that the State Tax Commission, for the purpose of ascertaining the correctness of any return, shall have power to examine or to cause to be examined, by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return.

B. That the adjustments made by the Audit Division are presumed to be correct. Section 689(e) of the Tax Law imposes the burden of proof upon petitioners to show where the adjustments are incorrect.

C. That petitioners have failed to sustain their burden of proof to show that the inclusion of \$5,000.00 for cash living expense for each year was incorrect. No documentary or other evidence was submitted to show that the audit result was incorrect or that the bank deposit analysis was incorrect.

D. That the petition of LeRoy H. and Sandra Villnave is denied and the notices of deficiency dated December 19, 1977 are sustained.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER