

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Robert & Constance Walrath

:

:

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 1973 & 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 27th day of May, 1982, he served the within notice of Decision by certified mail upon Robert & Constance Walrath, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert & Constance Walrath
RD 1, Biddleman Rd.
Dolgeville, NY 13365

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
27th day of May, 1982.

Connie A. Haglund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Robert & Constance Walrath : 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 1973 & 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 27th day of May, 1982, he served the within notice of Decision by certified mail upon John T. Wrape the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John T. Wrape
40 Oxford Road
New Hartford, NY 13413

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
27th day of May, 1982.

Connie G. Hagelund

J. Vredenburg

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

May 27, 1982

Robert & Constance Walrath
RD 1, Biddleman Rd.
Dolgeville, NY 13365

Dear Mr. & Mrs. Walrath:

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
John T. Wrape
40 Oxford Road
New Hartford, NY 13413
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT WALRATH AND CONSTANCE WALRATH	:	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 1973 and 1974.	:	

Petitioners, Robert Walrath and Constance Walrath, R.D. #1, Biddleman Road, Dolgeville, New York 13365, 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 1973 and 1974. (File No. 19237)

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on June 19, 1981, at 1:00 P.M. Petitioners appeared by John L. Wrape, P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether there were monies deposited into petitioners' bank accounts from sources other than business revenue.

FINDINGS OF FACT

1. Petitioners, Robert Walrath and Constance Walrath, filed New York State joint income tax returns for 1973 and 1974. Petitioner Robert Walrath owned a business under the name and style of "Walrath's Exxon Service", R.D.

#2, Dolgeville Road, Little Falls, New York 13365. He filed unincorporated business tax returns for the years 1973 and 1974.

2. On March 28, 1977, the Audit Division issued a Statement of Audit Changes against petitioners for personal income tax and a Statement of Audit Changes against petitioner Robert Walrath for unincorporated business tax for 1973 and 1974. These statements were issued based on a bank deposit analysis, wherein it found petitioners had unreported income of \$7,735.27 and \$8,570.72 for 1973 and 1974, respectively. Accordingly, on March 28, 1977, the Division issued a Notice of Deficiency asserting additional personal income tax of \$1,401.25, plus penalty pursuant to section 685(b) of the Tax Law of \$70.06 and interest of \$267.53, for a total due of \$1,738.84 against petitioners for the years 1973 and 1974. On that same date the Division issued another Notice of Deficiency for 1973 and 1974 against petitioner Robert Walrath asserting unincorporated business tax of \$757.24, plus penalty pursuant to section 685(b) of the Tax Law of \$37.87 and interest of \$149.07, for a total due of \$944.18.

3. At the hearing, the Audit Division submitted a revised bank deposit analysis, wherein it found petitioners had unreported income of \$9,362.09 and \$5,456.44 for 1973 and 1974 respectively. Accordingly, the personal income and unincorporated business taxes asserted was reduced to \$1,214.65 and \$691.72 respectively.

4. Petitioners contended that there were monies deposited into their bank accounts from other than business revenue. Petitioners were granted an extension of time in which to submit documentary evidence with respect to these monies; however, no documentary evidence was submitted.

CONCLUSIONS OF LAW

A. That petitioners have not presented adequate or supporting evidence sufficient to establish that the notices of deficiency issued March 28, 1977 or that the revised bank deposit analysis per Finding of Fact "3" were erroneous, arbitrary or capricious.

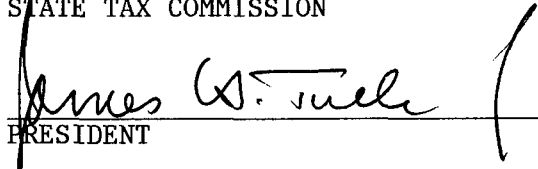
B. That the Audit Division is directed to modify the notices of deficiency issued March 28, 1977 in accordance with Finding of Fact "3".

C. That the petition of Robert Walrath and Constance Walrath is granted to the extent indicated in Conclusion of Law "B", and that, except as so granted, the petition is in all other respects denied.

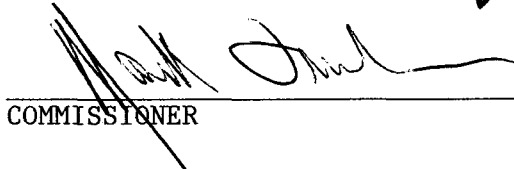
DATED: Albany, New York

MAY 27 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER