

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lloyd Weaver :
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 :
Year 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 11th day of June, 1982, he served the within notice of Decision by certified mail upon Lloyd Weaver, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

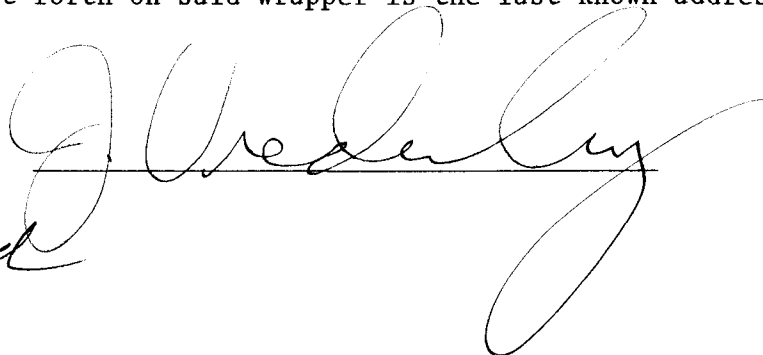
Lloyd Weaver
Route 11, P.O. Box 148
Hastings, NY 13076

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.


Annie A. Skelton


Jay Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Lloyd Weaver	: : : : :	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 Year 1974		

State of New York
County of Albany

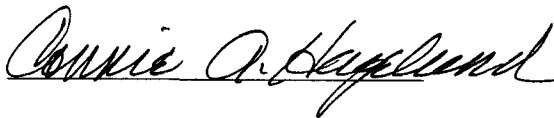
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of June, 1982, he served the within notice of Decision by certified mail upon Victor Chini the representative of the petitioner in the within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

Victor Chini
Chini & Chini
915 State Tower Bldg.
Syracuse, NY 13202

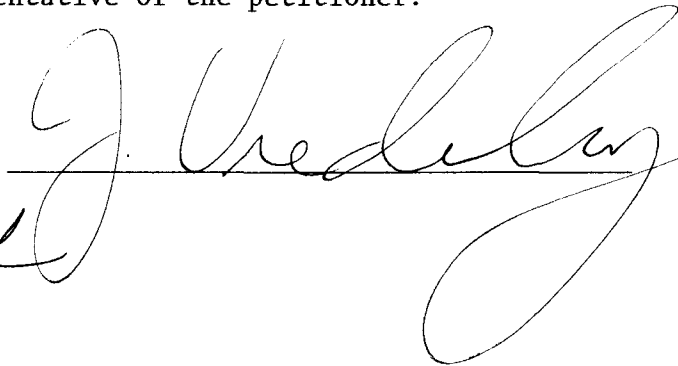
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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.



Connie A. Highland



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

June 11, 1982

Lloyd Weaver
Route 11, P.O. Box 148
Hastings, NY 13076

Dear Mr. Weaver:

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
Victor Chini
Chini & Chini
915 State Tower Bldg.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
LLOYD WEAVER
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 Year 1974.

DECISION

Petitioner, Lloyd Weaver, Route 11, P.O. Box 148, Hastings, New York 13076, 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 year 1974 (File No. 29266).

On December 22, 1981, the State Tax Commission was advised by letter that petitioner desired to waive a formal hearing and to submit the case to the State Tax Commission based on the entire record contained in the file. After due consideration of the record, the State Tax Commission renders the following decision.

ISSUE

Whether the Notice of Deficiency, which was based on an Internal Revenue Service final determination, was timely issued.

FINDINGS OF FACT

1. On September 18, 1979, the Audit Division issued a Statement of Audit Changes proposing additional personal income and unincorporated business taxes, plus interest, upon petitioner based on receipt of a final federal determination for the year 1974. Accordingly, on January 30, 1980, it issued a Notice of Deficiency in the amounts of \$14,399.00, plus penalty and/or interest of \$5,864.48, for a total of \$20,263.48.

2. Petitioner based his petition solely on the allegation that the Notice of Deficiency was untimely in that it was issued three years after the period of limitation on assessment for 1974 expired on April 15, 1978. The 1974 tax return was filed on or about April 15, 1975. Therefore, it was claimed that the notice was barred by the statute of limitations.

3. Petitioner did not report an increase in taxable income embodied in a Federal audit report for the year 1974. On May 31, 1978, petitioner signed a waiver of restrictions on assessment in his federal income tax for 1974 wherein his tax liability was increased in the amount of \$42,203.80. Said amount was attributable to adjustments made by the Internal Revenue Service to gross receipts, repairs, depletion, depreciation, business promotion and home office. The amount of petitioner's investment credit also was adjusted.

CONCLUSIONS OF LAW

A. That section 659 of the Tax Law prescribes that if a taxpayer's Federal taxable income "for any taxable year" is changed or corrected by the United States internal revenue service," the taxpayer shall report such changes or correction "within ninety days after the final determination of such change" (emphasis added).

B. That petitioner Lloyd Weaver failed to comply with section 659 of the Tax Law. Any taxes due as a result of said failure may be assessed at any time, in accordance with the meaning and intent of section 683(c)(1)(C) of the Tax Law. Matter of Charles A. Frankenhoff, State Tax Commission, December 14, 1979.

C. That the Notice of Deficiency dated January 30, 1980 was properly issued within the purview of section 681(e) of the Tax law. Gerald Orseck and

Virginia Orseck v. State Tax Commission, Supreme Court, Special Term, Albany
County, July 24, 1981.

D. That the petition of Lloyd Weaver is denied and the Notice of Deficiency
issued on January 30, 1980 is sustained, together with such additional interest
as may be lawfully owing.

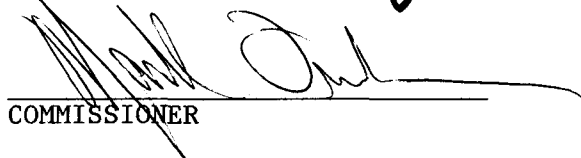
DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER