

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Linus B. & Diane M. Wensman :
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 1976 & 1977. :
AFFIDAVIT OF MAILING

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 29th day of December, 1982, he served the within notice of Decision by certified mail upon Linus B. & Diane M. Wensman, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

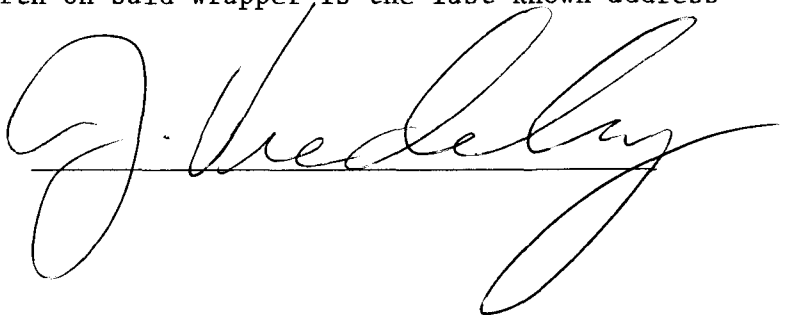
Linus B. & Diane M. Wensman
205 Steuben St.
Horseheads, NY 14845

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
29th day of December, 1982.

Kathy Pappas
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Linus B. & Diane M. Wensman :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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State of New York
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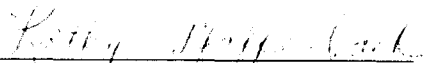
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1982, he served the within notice of Decision by certified mail upon Lynn G. Keyser the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lynn G. Keyser
Denton, Keyser, LaBrecque & Moore
200 William St.
Elmira, NY 14901

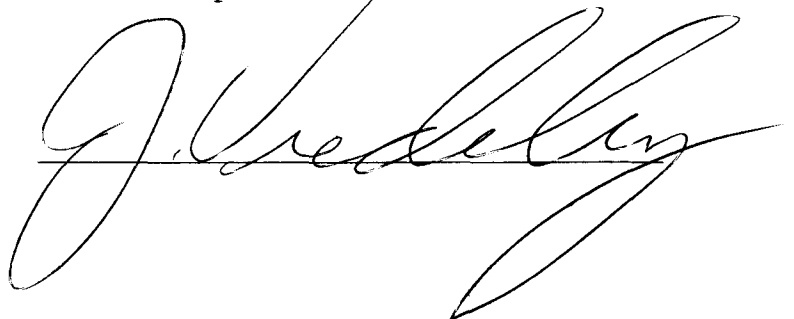
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
29th 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 29, 1982

Linus B. & Diane M. Wensman
205 Steuben St.
Horseheads, NY 14845

Dear Mr. & Mrs. Wensman:

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
Lynn G. Keyser
Denton, Keyser, LaBrecque & Moore
200 William St.
Elmira, NY 14901
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LINUS B. WENSMAN AND DIANE M. WENSMAN	:	DECISION
	:	
for Redetermination of Deficiencies or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of	:	
the Tax Law for the Years 1976 and 1977.	:	

Petitioners, Linus B. Wensman and Diane M. Wensman, 205 Steuben Street, Horseheads, New York 14845, filed a petition for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1976 and 1977 (File Nos. 29079, 29080, 29081 and 29082).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York, on September 23, 1981 at 10:45 A.M. Petitioner Linus B. Wensman appeared by Lynn G. Keyser and Richard D. Keyser, Esqs. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined petitioners tax liability for 1976 and 1977 as the result of an audit.

FINDINGS OF FACT

1. On August 17, 1979, based on an audit, the Audit Division issued notices of deficiency against petitioners Linus B. Wensman and Diane M. Wensman imposing additional personal income tax for each of the taxable years of 1976 and 1977 in the following amounts:

- (a) For 1976, additional personal income tax of \$2,531.83, plus penalty and interest of \$642.09.
- (b) For 1977, additional personal income tax of \$2,192.45, plus penalty and interest of \$363.44.

On that same date, based on the same audit, the Audit Division issued notices of deficiency against petitioner Linus B. Wensman asserting unincorporated business tax for each taxable year at issue as follows:

- (a) For 1976, unincorporated business tax of \$968.77, plus penalty and interest of \$238.32.
- (b) For 1977, unincorporated business tax of \$655.11, plus penalty and interest of \$105.48.

These deficiencies were based on the Audit Division's findings of deposits into savings accounts that were not sufficiently documented and considered to be additional taxable income. The deposits were as follows:

Deposits to:	Chemung Canal Trust Company	07/13/76	\$ 5,000.00
	Chemung Canal Trust Company	08/16/76	5,500.00
	Elmira Savings Bank	07/12/76	5,000.00
	Elmira Savings Bank	08/16/76	<u>5,500.00</u>
Total Adjustment For 1976			<u>\$21,000.00</u>
Deposits to:	Chemung Canal Trust Company	06/07/77	\$ 3,000.00
	Chemung Canal Trust Company	11/17/77	7,000.00
	Elmira Savings Bank	06/07/77	5,000.00
	Elmira Savings Bank	12/09/77	<u>6,000.00</u>
Total Adjustment For 1977			<u>\$21,000.00</u>

2. The savings accounts to which the above deposits were made were in the name of petitioner Linus B. Wensman only. The monies deposited were received from a James A. Cuthbert in the form of cash and checks. For monies received the petitioner Linus B. Wensman gave James A. Cuthbert five "on demand" promissory notes as follows:

<u>DATE OF NOTE</u>	<u>AMOUNT</u>
July 10, 1976	\$10,000.00
August 14, 1976	11,000.00
Total for 1976	<u>\$21,000.00</u>
June 4, 1977	\$ 8,000.00
November 16, 1977	7,000.00
December 5, 1977	6,000.00
Total for 1977	<u>\$21,000.00</u>

The purpose for the monies was for long term investment in real estate in the Elmira area. Subsequently the monies were used for that purpose. The monies transferred to Linus B. Wensman by James A. Cuthbert were provided by the following people:

John Costello	\$7,500	
Bruce Young	\$5,000	and \$1,100
Kevin McCarty	\$ 900	
Rudy Martorella	\$2,500	
Jim Cuthbert	\$3,000	
Linus Wensman	\$1,000	
 Total For 1976		<u>\$21,000</u>
John Costello	\$ 3,000	
Bruce Young	\$ 2,000	
Kevin McCarty	\$ 2,180	
Jim Cuthbert	\$15,000	
 Total For 1977		<u>\$22,180</u>

3. The funds at issue were used to purchase rental property. All the real estate was deeded in the name of Linus B. Wensman. Petitioner managed the properties and statements of conditions were sent to other investors in each of the years in question. All income and expenses were reported on the petitioners tax returns during the years at issue, this arrangement was known and agreed to by the other investors. None of the properties showed a profit.

4. An audit of James A. Cuthbert was triggered by the audit conducted on Linus B. Wensman and Diane M. Wensman. No adjustments were found, but Mr. Cuthbert did sign a consent to keep the years at issue open until the petitioners' audit was settled. Other than the demand note given by petitioner Linus B. Wensman to Mr. Cuthbert, there was no other agreements in writing conditioning the use of said monies. Mr. Cuthbert had given the monies to petitioner Linus B. Wensman as indicated above since he had known the petitioner for over forty-five years and was his brother-in-law.

5. The Audit Division did not contend the monies came from sources other than those stated above.

CONCLUSIONS OF LAW

A. That during the years at issue the petitioners Linus B. Wensman and Diane M. Wensman, did receive monies from Mr. James A. Cuthbert for the purpose of investment in real estate. That, as such, said funds would not be included in the petitioners' taxable income since these funds did not represent earned income to petitioners.

B. That the petition of Linus B. Wensman and Diane M. Wensman is granted and the notices of deficiency dated August 17, 1979 are cancelled.


DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER