

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Klaus P. & Ingrid R. Wolff :
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 1977. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

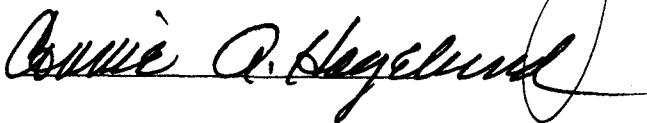
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of June, 1982, he served the within notice of Decision by certified mail upon Klaus P. & Ingrid R. Wolff, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

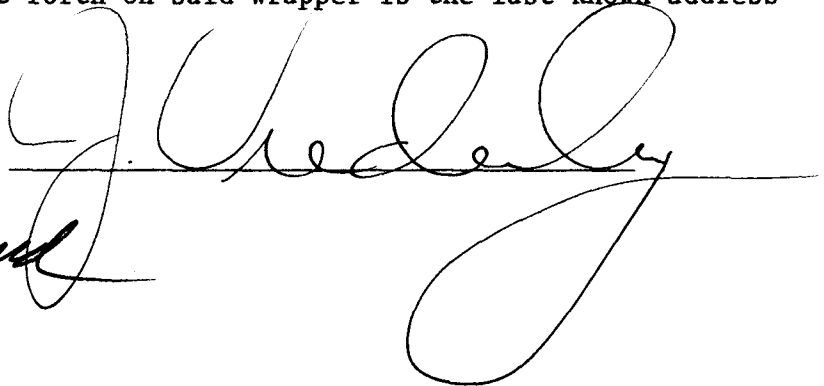
Klaus P. & Ingrid R. Wolff
Comfort Trail
Montgomery, NY 12549

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
4th day of June, 1982.


Annie R. Hegelund



STATE OF NEW YORK
STATE TAX COMMISSION

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Klaus P. & Ingrid R. Wolff :
AFFIDAVIT OF MAILING
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the Year 1977 :

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 4th day of June, 1982, he served the within notice of Decision by certified mail upon Paul A. Baldovin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul A. Baldovin
2 La Grange Ave., Suite 226
Poughkeepsie, NY 12602

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
4th day of June, 1982.

Carrie A. Haywood

Jay Vredenburg

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

June 4, 1982

Klaus P. & Ingrid R. Wolff
Comfort Trail
Montgomery, NY 12549

Dear Mr. & Mrs. Wolff:

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
Paul A. Baldovin
2 La Grange Ave., Suite 226
Poughkeepsie, NY 12602
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
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of	:	
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KLAUS P. WOLFF AND INGRID R. WOLFF	:	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 Year 1977.	:	

Petitioners, Klaus P. Wolff and Ingrid R. Wolff, Comfort Trail, Montgomery, New York 12549, 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 1977 (File Nos. 29554 and 29555).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 24, 1981 at 10:45 A.M. Petitioner Klaus P. Wolff appeared with Paul A. Baldovin, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether a field audit adjustment which attributed additional income to petitioners as the result of a cash availability audit was proper.

FINDINGS OF FACT

1. Klaus P. Wolff and Ingrid R. Wolff (hereinafter petitioners) timely filed a joint New York State Income Tax Resident Return for the year 1977 whereon, pursuant to a New York State Unincorporated Business Tax Return for said year filed in conjunction therewith, they reported a net profit of \$10,961.00 derived from their retail grocery store doing business as Central Meat Market.

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2. On December 10, 1979, as the result of a field audit using the cash availability method, the Audit Division issued both a Statement of Unincorporated Business Tax Audit Changes and a Statement of Personal Income Tax Audit Changes wherein additional income of \$1,909.00 was attributed to petitioners. Said statements included other adjustments which were not contested and therefore are not at issue herein. Accordingly, on February 14, 1980 a Notice of Deficiency was issued against Klaus Wolff asserting additional unincorporated business tax of \$173.70, plus interest of \$41.81, for a total due of \$215.51. Additionally, a second Notice of Deficiency was issued under the same date against petitioners asserting additional personal income tax of \$140.71, plus interest of \$33.88, for a total due of \$174.59.

3. Although petitioners contended that the adjustment attributing additional income to them of \$1,909.00 was erroneous, no evidence, documentary or otherwise, was offered which was not previously taken into consideration in determining said adjustment.

4. Although petitioner Klaus P. Wolff was present at the hearing held herein, he chose not to testify.

CONCLUSIONS OF LAW

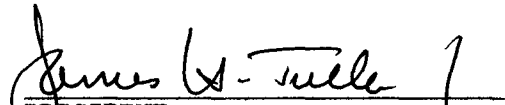
A. That petitioners have failed to sustain their burden of proof required pursuant to section 689(e) of the Tax Law to show that the adjustment attributing additional income to them of \$1,909.00 was erroneous and/or improper. Accordingly, said adjustment is hereby sustained.


B. That the petition of Klaus P. Wolff and Ingrid R. Wolff is denied and the notices of deficiency issued on February 14, 1980, with respect to unincorporated business tax and personal income tax, are hereby sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUN 04 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER