

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert M. Clark :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Years :
1978 & 1979. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 April, 1983, he served the within notice of Decision by certified mail upon Robert M. Clark, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert M. Clark
RD #1 Box 51
Arkport, NY 14807

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 April, 1983.

David Parchuck

Annex A. Hagedorn

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

April 27, 1983

Robert M. Clark
RD #1 Box 51
Arkport, NY 14807

Dear Mr. Clark:

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 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	:	
ROBERT M. CLARK	:	DECISION
for Redetermination of Deficiencies or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1978 and	:	
1979.	:	

Petitioner, Robert M. Clark, RD #1, Box 51, Arkport, New York 14807, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1978 and 1979 (File Nos. 30109 and 32041).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 18, 1982 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether it was proper for the Audit Division to estimate petitioner's taxable income for the years 1978 and 1979.

FINDINGS OF FACT

1. Petitioner herein, Robert M. Clark, filed New York State income tax resident returns for the years 1978 and 1979 on March 10, 1979 and March 23, 1980, respectively. Said returns were incomplete in that the columns where petitioner was to report his income, deductions, exemptions and compute his tax liability were marked with asterisks or XX's. The only figure shown on the 1978 return was "State Tax Withheld" of \$1,598.90. Remitted with the 1978

return was a check in the amount of \$12.03. The 1979 return reported only "State Tax Withheld" of \$2,254.82 and requested a refund of \$223.80.

2. As an explanation of the manner in which the returns were prepared, petitioner attached to the 1978 return pages 1 to 40; while attached to the 1979 return were pages 1 to 34. The attachments to both returns were essentially identical and included copies of affidavits, copies of the Declaration of Independence, copies of the United States Constitution and its amendments and various other documents. Both returns contain a statement explaining the asterisks or XX's in the following manner:

"This means specific objection is made under the 5th Amendment, U.S. Constitution, and that similar objection is made to the question under the 1st, 4th, 7th, 8th, 9th, 10th, 13th, 14th, and 16th Amendments and the Privacy Act of 1974."

3. Attached to the 1978 return were two (2) wage and tax statements which, when combined, reported total wages paid to petitioner of \$38,636.00. There were also two (2) wage and tax statements attached to the 1979 return and, when combined, these statements totaled \$42,184.00.

4. On March 13, 1980, the Audit Division issued a Notice of Deficiency to petitioner for the year 1978, asserting that personal income of \$1,986.97 was due together with interest. A second Notice of Deficiency was issued to petitioner on November 28, 1980 for the year 1979, asserting that \$1,435.26 of personal income tax was due together with interest. Both of the aforementioned notices of deficiency were based on explanatory statements of audit changes wherein petitioner's personal income tax liability was computed using total wages reported on the wage and tax statements as total New York income. Petitioner was allowed the standard deduction and credit for one exemption in the computation of taxable income. Petitioner was also given credit for New York State tax withheld as shown on the wage and tax statements and, for the

year 1978, he was given credit for the \$12.03 payment made with the filing of his 1978 return.

5. No documentary or other credible evidence was submitted by petitioner detailing his income and deductions for the years 1978 and 1979. Petitioner maintains that he would refile or amend his 1978 and 1979 returns detailing his income and deductions if the Audit Division would show him how to do so without waiving or violating the constitutional privileges enumerated in Finding of Fact "3", supra.

CONCLUSIONS OF LAW

A. That section 681(a) of the Tax Law provides, inter alia, that

"If a taxpayer fails to file an income tax return required under this article, the tax commission is authorized to estimate the taxpayer's New York taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer."

B. That the returns submitted by petitioner for the years 1978 and 1979 do not constitute the filing of income tax returns. Accordingly, it was proper for the Audit Division to estimate petitioner's taxable income for the years 1978 and 1979.

C. That the constitutionality of the laws of the State of New York are presumed at the administrative level. That the Tax Commission has no authority to declare the law unconstitutional.

D. That the petitions of Robert M. Clark are denied and the notices of deficiency dated March 13, 1980 and November 28, 1980 are sustained, together with such additional interest as may be lawfully due and owing.

Albany, New York

STATE TAX COMMISSION

APR 27 1983

Richard A. Clark
PRESIDENT

Frank R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER