

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Joseph & Elizabeth Entler :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :  
of New York State Personal Income and Unincorporated :  
Business Taxes under Articles 22 and 23 of the Tax :  
Law for the Years 1975 and 1977 and New York City :  
Personal Income Tax under Chapter 46, Title T of the :  
Administrative Code of the City of New York for the :  
Year 1977. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of July, 1984, he served the within notice of Decision by certified mail upon Joseph & Elizabeth Entler, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph & Elizabeth Entler  
57 19-141 St.  
Flushing, NY 11355

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
18th day of July, 1984.

Daniel Parchuck

Ann Marie O'Brien  
Authorized to administer oaths  
pursuant to Tax Law section 174

## STATE TAX COMMISSION

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of :  
Joseph & Elizabeth Entler :  
for Redetermination of a Deficiency or for Refund :  
of New York State Personal Income and Unincorporated :  
Business Taxes under Articles 22 and 23 of the Tax :  
Law for the Years 1975 and 1977 and New York City :  
Personal Income Tax under Chapter 46, Title T of the :  
Administrative Code of the City of New York for the :  
Year 1977. :

State of New York }  
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of July, 1984, he served the within notice of Decision by certified mail upon Paul Signorelli, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul Signorelli  
31 Penbroke Avenue  
Staten Island, NY 10301

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
18th day of July, 1984.

David Parolnick

Connie A. Hapner  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

July 18, 1984

Joseph & Elizabeth Entler  
57 19-141 St.  
Flushing, NY 11355

Dear Mr. & Mrs. Entler:

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 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Paul Signorelli  
31 Penbroke Avenue  
Staten Island, NY 10301  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSEPH ENTLER AND ELIZABETH ENTLER	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income and	:	
Unincorporated Business Taxes under Articles 22	:	
and 23 of the Tax Law for the Years 1975 and	:	
1977 and New York City Personal Income Tax	:	
under Chapter 46, Title T of the Administrative	:	
Code of the City of New York for the Year 1977.	:	

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Petitioners, Joseph Entler and Elizabeth Entler, 57-19 141st Street, Flushing, New York 11355, filed a petition for redetermination of a deficiency or for refund of New York State personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1975 and 1977 and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File Nos. 31884, 32171 and 32172).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 7, 1983 at 1:15 P.M., with all briefs to be submitted by January 9, 1984. Petitioners appeared by Paul A. Signorelli, Esq. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the notices of deficiency issued by the Audit Division asserted deficiencies: (1) in New York State unincorporated business tax for 1975 and

1977, (2) in New York State personal income tax for 1977 and (3) in New York City personal income tax for 1977.

FINDINGS OF FACT

1. Petitioners herein, Joseph Entler and Elizabeth Entler, timely filed joint New York State income tax resident returns for the years 1975 and 1977. The 1977 return also included New York City resident income tax. Attached to the personal income tax returns were unincorporated business tax returns for each of the years at issue.

2. On January 21, 1979, petitioners executed Form IT-75, Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes, extending the period for assessment for the year 1975 to any time on or before April 15, 1980.

3. Petitioners' personal and business books and records for the years 1975, 1976<sup>1</sup> and 1977 were audited by personnel from the Queens District Office of the Department of Taxation and Finance. As the result of said examination, two statements of audit changes were issued to petitioners for the years 1975, 1976 and 1977.

4. The first Statement of Audit Changes (Dept. Exhibit "A") was for the years 1975 and 1977 and proposed additional tax due was set forth in the following manner:

	<u>1975</u>	<u>1977</u>	
New York State Personal Income Tax	\$251.68	\$826.95	\$1,078.63
Section 685(b) Penalty	12.58	41.35	53.93
	<u>Husband</u>	<u>Husband</u>	
Unincorporated Business Tax	160.21	432.60	592.81
Section 685(b) Penalty	8.01	21.63	29.64
Sec. 685(c) Penalty for Underestimation			
New York State		44.60	44.60

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<sup>1</sup> The year 1976 is not in dispute nor is it included in this proceeding.

The additional taxes due as proposed in the aforementioned Statement of Audit Changes were incorporated into two (2) separate statutory notices of deficiency, both dated April 11, 1980. The first Notice of Deficiency was for New York State unincorporated business taxes of \$592.81, plus penalty and interest of \$157.32, for an alleged total due of \$750.13. The period in question shown on the first Notice of Deficiency was "07/57/87 to 06/76/77". A copy of the Statement of Audit Changes accompanied the Notice of Deficiency. The second Notice of Deficiency dated April 11, 1980 was for New York State personal income taxes of \$1,078.63, plus penalty and interest of \$320.61, for an alleged total due of \$1,399.24. Only the period 1975 was shown on the second Notice of Deficiency. A copy of the Statement of Audit Changes also accompanied the second Notice of Deficiency.

5. The second Statement of Audit Changes (Dept. Exhibit "E") was for the years 1976 and 1977 and proposed additional tax due was set forth in the following manner:

	<u>1976</u>	<u>1977</u>
NYC Residents Tax		\$269.02
Sec. 685(b) Penalty		13.45
Sec. 685(c) Penalty for Underestimation:		
New York State	\$65.75	65.75
New York City	11.10	7.03

The additional tax due as proposed in the above-mentioned Statement of Audit Changes was incorporated into a third Notice of Deficiency dated August 21, 1980. Said Notice of Deficiency proposed additional tax due of \$269.02, plus penalty and interest of \$150.60, for an alleged total due of \$419.62. Only the period 1976 was shown on the third Notice of Deficiency. A copy of the Statement of Audit Changes accompanied the third Notice of Deficiency.

6. Petitioners argue that all three (3) of the statutory notices of deficiency were defective in whole or in part for the following reasons:

(a) That the first Notice of Deficiency dated April 11, 1980 assessing New York State unincorporated business tax of \$592.81 incorrectly identifies the period in question as "07/57/87 to 06/76/77". Petitioners maintain that no such period exists and that therefore the entire Notice must be cancelled.

(b) That the second Notice of Deficiency dated April 11, 1980 assessing New York State personal income tax of \$1,078.63 (\$251.68 for 1975 and \$826.95 for 1977) lists only the period 1975 on said Notice. Petitioners assert that since the period 1977 was not included on the Notice that the \$826.95 of tax allegedly due for 1977 must be deleted from said Notice.

(c) That the third Notice of Deficiency dated August 21, 1980 assessing New York City personal income tax of \$269.02 identifies the period in question as 1976. Petitioners maintain that the \$269.02 of tax allegedly due is applicable to the year 1977 and that since the year 1977 was not shown on the Notice, said amount must be deleted from the Notice.

7. At the hearing held herein, the parties stipulated that in the event the notices of deficiency were found to be proper, that the correct tax due is to be reduced to the following amounts:

<u>Type of Tax</u>	<u>1975</u>	<u>1977</u>
New York State Unincorporated Business Tax	\$116.23	\$282.66
New York State Personal Income Tax	\$163.23	\$567.31
New York City Personal Income Tax	--	\$189.90

8. Petitioners did not argue nor was any evidence presented with respect to any of the penalties asserted due for the years in question.

CONCLUSIONS OF LAW

A. That although the notices of deficiency in question either failed to properly identify the years at issue or failed to list all of the years at issue, the statements of audit changes, which were enclosed with said notices, clearly apprised petitioners of the years at issue and the basis of the asserted deficiencies. Accordingly, the notices are not invalid since petitioners should not have been misled by the failure to properly identify the years at issue or list all the years at issue. Also, we note that there is nothing in the record to support that petitioners were in any way unduly disadvantaged by the manner in which the notices of deficiency were issued (Matter of Fernandez et al. v. Comm., 39 TCM (CCH) 569 (1979); Matter of Paul and ReINETTE Cunningham, State Tax Commission, January 18, 1984).


B. That additional taxes due, as asserted in the three (3) notices of deficiency, are to be reduced to the stipulated amounts set forth in Finding of Fact "7", supra.

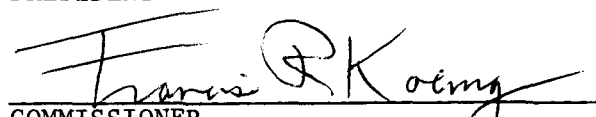
C. That the petition of Joseph Entler and Elizabeth Entler is granted to the extent indicated in Conclusion of Law "B", supra; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 18 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER