

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jeffrey & Sheila Platt :
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law for the Years 1978 & 1979. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Peter & Jean Platt :
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law for the Years 1978 & 1979. :

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 20th day of January, 1984, he served the within notice of Decision by certified mail upon Jeffrey & Sheila Platt, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jeffrey & Sheila Platt
29 Pheasant Ridge Dr.
Loudonville, NY 12211

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
20th day of January, 1984.

David Parchuck

James A. Hagedorn
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 20, 1984

Jeffrey & Sheila Platt
29 Pheasant Ridge Dr.
Loudonville, NY 12211

Dear Mr. & Mrs. Platt:

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, 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
James E. Weiss
17 First St.
Troy, NY 12180
Taxing Bureau's Representative

STATE OF NEW YORK

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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 20th day of January, 1984, he served the within notice of Decision by certified mail upon Peter & Jean Platt, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter & Jean Platt
8 E. Alfred Dr.
Albany, NY 12205

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
20th day of January, 1984.

David Parchuck

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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 20th day of January, 1984, he served the within notice of Decision by certified mail upon James E. Weiss, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James E. Weiss
17 First St.
Troy, NY 12180

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
20th day of January, 1984.



Authorized to administer oaths
pursuant to Tax Law section 174

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

January 20, 1984

Peter & Jean Platt
8 E. Alfred Dr.
Albany, NY 12205

Dear Mr. & Mrs. Platt:

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, 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.

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Building #9, State Campus
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Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
James E. Weiss
17 First St.
Troy, NY 12180
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STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JEFFREY PLATT AND SHEILA PLATT :
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1978 and 1979. :

DECISION

In the Matter of the Petition :
of :
PETER PLATT AND JEAN PLATT :
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1978 and 1979. :

Petitioners, Jeffrey Platt and Sheila Platt, 29 Pheasant Ridge Drive, Loudonville, New York 12211, Peter Platt and Jean Platt, 8 E. Alfred Drive, Albany, New York 12205, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1978 and 1979 (File Nos. 36787 and 36788).

A consolidated small claims hearing was held before Charles Reynolds, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building #9, Albany, New York, on August 17, 1983 at 9:30 A.M. Petitioners appeared by James E. Weiss, The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether adjustments made for inventory withdrawn for personal use and for personal use of automobiles constituted income constructively received.

FINDINGS OF FACT

1. Petitioners, Jeffrey Platt and Sheila Platt¹, timely filed New York State income tax resident returns for the years 1978 and 1979. The withholding statement attached to each return indicated that petitioner Jeffrey Platt was an employee of Platts Dairy Inc.

2. Petitioners, Peter Platt and Jean Platt², timely filed New York State income tax resident returns for the years 1978 and 1979. The withholding statement attached to each return indicated that petitioner Peter Platt was an employee of Platts Dairy Inc.

3. On October 14, 1981, the Audit Division issued a Statement of Personal Income Tax Audit Changes to petitioner Jeffrey Platt showing personal income tax due for 1978 and 1979 in the total amount of \$418.39, plus interest. On the same date another Statement of Personal Income Tax Audit Changes was issued to petitioner Peter Platt showing personal income tax due for 1978 and 1979 in the total amount of \$467.32, plus interest. The statements were issued as a result of a substantiation audit conducted by the Audit Division of the books and records of Platts Dairy Inc. The audit resulted in an increase in the taxable income of each petitioner due to the following adjustments:

1-2 Sheila Platt and Jean Platt are involved in this proceeding due solely to the filing of income tax returns with their husbands. Accordingly, the use of the term petitioner and petitioners hereinafter shall refer to either Jeffrey or Peter individually or jointly.

	<u>1978</u>	<u>1979</u>
Constructive dividend income from Platts Dairy Inc.		
Inventory withdrawn (personal)	\$1,500.00 ³	\$1,500.00 ⁴
Auto Expense	600.00	600.00

Accordingly, on March 30, 1982, a Notice of Deficiency was issued to each petitioner.

4. Petitioners Jeffrey and Peter Platt were officers of Platts Dairy Inc. ("Platts"). Platts, located in Colonie, New York, was a restaurant, dairy bar and caterer which derived a large part of its income from the catering business. The audit of the records of said corporation included: an analysis of officers drawing accounts and disbursement invoices; verifying sales to the sales journal; verifying cash payments and sales; and reviewing journal entries. The personal income tax returns of corporate officers were reviewed as well as their personal checking accounts and bank statements.

5. The Audit Division's disallowance of auto expenses for the years in issue was due to petitioners' assertion that personal vehicles were also used in business. The U.S. Corporation Income Tax Return for each of the years in issue listed two vehicles subject to depreciation. However, corporate records showed monthly bills for repairs and gas for personal vehicles under repairs and maintenance expense. The personal checking accounts of petitioners did not show any payments for these items. Petitioners asserted that they purchased the cars and paid for the insurance and registrations while the corporation paid for the gas and repairs. Petitioners stated that their mileage was

3-4 The Audit Division and petitioners agreed at the hearing that the adjustment made for inventory withdrawn of \$1,500.00 be reduced to \$750.00 resulting in a net adjustment to each petitioner of \$1,350.00.

approximately 34,510 miles per year and their insurance cost \$1,700 per year. No documentary evidence was submitted to support the mileage driven, insurance costs or an apportionment of expenses between personal and business use of vehicles.

6. The Audit Division also made an adjustment for withdrawal of food items from the restaurant (see Finding of Fact "3" supra). The auditor for the Audit Division testified that the corporation income tax returns did not show any items withdrawn for personal use, that no adjustments were made to either purchases or sales and that adjustments were not based on size of petitioner's family. Petitioner's representative asserted that the adjustments made by the Audit Division were arbitrarily determined and he submitted a letter signed by petitioners stating that they did not withdraw food for personal use because of the size of petitioners' families and because "We have enough problems controlling employee pilferage - stealing, etc.".

CONCLUSIONS OF LAW

A. That petitioners Jeffrey and Sheila Platt and Peter and Jean Platt have failed to sustain their burden of proof imposed by section 689(e) of the Tax Law to show that the adjustments made by the Audit Division were erroneous. Therefore, except as provided for in footnotes 3 and 4 supra, the adjustments made for inventory withdrawn for personal use and for personal use of automobiles constituted income constructively received and subject to New York personal income tax.

B. That the notices of deficiency dated March 30, 1982 are to be modified in accordance with Conclusion of Law "A" supra; and that, except as so granted, the petitions of Jeffrey and Sheila Platt and Peter and Jean Platt are denied.

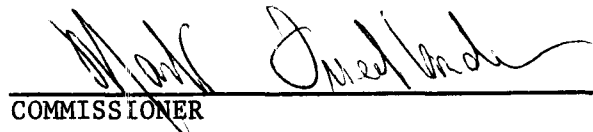
DATED: Albany, New York

STATE TAX COMMISSION

JAN 20 1984


PRESIDENT


COMMISSIONER


COMMISSIONER