

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Fred R. Nodhturft :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1980. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

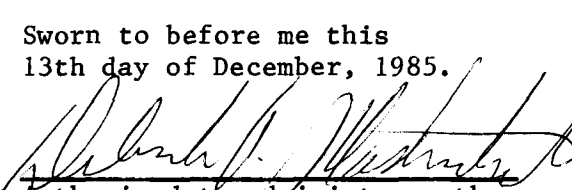
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Fred R. Nodhturft, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Fred R. Nodhturft
928A Bremen Ave.
Pensacola, FL 32507

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
13th day of December, 1985.


Authorized to administer oaths
pursuant to Tax Law section 174



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

December 13, 1985

Fred R. Nodhturft
928A Bremen Ave.
Pensacola, FL 32507

Dear Mr. Nodhturft:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRED R. NODHTURFT	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1980	:	

Petitioner, Fred R. Nodhturft, 928-A Bremen Avenue, Pensacola, Florida 32507, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1980 (File No. 51621).

On July 30, 1985, petitioner waived his right to a hearing and requested that a decision be rendered based on the entire record contained in his file. After due consideration, the State Tax Commission hereby renders the following decision.

ISSUE

Whether the tax and interest asserted due in a Notice of Deficiency issued solely to petitioner Fred R. Nodhturft should be split equally between petitioner and his former spouse.

FINDINGS OF FACT

1. Petitioner, Fred R. Nodhturft, and his then spouse, Carol Nodhturft, timely filed a joint New York State personal income tax return for 1980. Petitioner and Carol Nodhturft separated sometime after the year at issue and have subsequently been divorced. On said return petitioner's occupation was identified as "police officer"; while Carol Nodhturft's occupation was listed

as "housewife". The only income reported on said return was wage income of \$26,082.21 earned entirely by Mr. Nodhturft.

2. On August 29, 1983, the Audit Division issued a Statement of Audit Changes to Fred R. Nodhturft and Carol Nodhturft proposing additional New York State personal income tax due of \$200.60, plus interest. The proposed additional tax due was based on two adjustments to the manner in which New York itemized deductions were computed.

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on April 5, 1984, issued a Notice of Deficiency to Fred R. Nodhturft¹ proposing additional tax due of \$200.60, plus interest of \$71.78, for a total allegedly due of \$272.38.

4. Petitioner does not contest the computation of additional tax and interest due as set forth in the Notice of Deficiency dated April 5, 1984. However, petitioner does contend that payment of the total amount due should be split equally between himself and his former spouse since a joint return was filed for 1980.

CONCLUSIONS OF LAW

A. That section 651(b)(2)(A) of the Tax Law provides that when a husband and wife file a joint New York income tax return "...their tax liabilities shall be joint and several...". Regulation 20 NYCRR 145.10(b)(1)(i) provides that when a husband and wife file a joint return "...their income tax liabilities will be joint and several and each will be liable for the entire income tax on such joint return...".

¹ The record does not disclose why the Notice of Deficiency dated April 5, 1984 was addressed solely to Fred R. Nodhturft.

Accordingly, petitioner Fred R. Nodhturft is liable for the full amount of tax and interest asserted due in the Notice of Deficiency dated April 5, 1984.

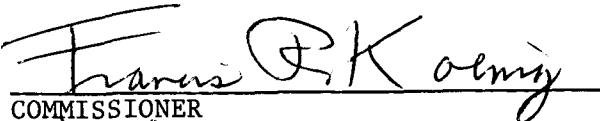
B. That the petition of Fred R. Nodhturft is denied and the Notice of Deficiency dated April 5, 1984 is sustained in full, together with such additional interest as may be lawfully due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985


PRESIDENT


COMMISSIONER


COMMISSIONER