

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Kenneth R. Wheeler : AFFIDAVIT OF MAILING
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 :
1973.

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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Kenneth Wheeler, R. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Kenneth R. Wheeler
121 Avenue D., Apt. #3
Melbourne, FL 32901

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
6th day of February, 1985.




Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Kenneth R. Wheeler
121 Avenue D., Apt. #3
Melbourne, FL 32901

Dear Mr. Wheeler:

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

KENNETH R. WHEELER

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1973.

Petitioner, Kenneth R. Wheeler, 735 B. Morris Avenue, Palm Bay, Florida 32905, 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 1973 (File No. 29153).

On April 12, 1984, petitioner waived his right to a small claims hearing and requested that a decision be rendered by the State Tax Commission based upon the Department of Taxation and Finance file, and additional documents to be submitted by May 12, 1984. Upon review of the record, the State Tax Commission renders the following decision.

ISSUES

I. Whether the amount of unreported income attributable to petitioner for 1973 according to a federal audit was subsequently reduced by the Internal Revenue Service.

II. Whether petitioner had reasonable cause for his failure to file a personal income tax return and remit income tax due thereon.

III. Whether a penalty imposed pursuant to section 685(b) of the Tax Law for negligence was proper.

FINDINGS OF FACT

1. On February 6, 1980, the Audit Division issued a Notice of Deficiency to petitioner, Kenneth R. Wheeler, asserting personal income tax due of \$191.58, plus penalties and interest of \$184.07, for a total due of \$375.65. The penalties were asserted for failure to file an income tax return and to pay the tax due thereon within the time period prescribed by the Tax Law and for negligence. An explanatory Statement of Audit Changes issued to petitioner on April 17, 1979 indicated that he did not file a State income tax return for 1973 and that he had unreported income of \$7,390.00 during said year.¹ The Audit Division allowed petitioner the standard deduction and one exemption in its tax computation. The unreported income amount was based on a federal audit change that petitioner did not report to New York State.

2. On June 10, 1976, the Internal Revenue Service issued an audit report to petitioner that showed unreported income of \$7,390.00 for 1973. The report asserted federal income tax due of \$968.00² and delinquency and negligence penalties of \$511.41. The tax table for single individuals with one exemption was used to compute the income tax due.

3. Petitioner maintains that his income was less than that shown on the federal audit report and that the Internal Revenue Service reduced his unreported income to \$3,300.00. He also asserts that the self-employment tax was eliminated. In support of his position, petitioner submitted a copy of a statement, dated March 25, 1977, which he had sent to the Internal Revenue Service protesting the federal audit changes. Said statement indicated that petitioner was

¹ Petitioner did not have any other items of income during 1973; therefore, the unreported income represented his total New York income.

² The report also asserted self-employment tax of \$591.20 on the unreported income, in addition to the income tax of \$968.00.

employed from April through December, 1973, and that during such period, he received total wages of \$3,300.00. Further, the statement indicated that taxes were not withheld from his salary, that he did not receive a wage and tax statement for 1973 from his employer and that he was a full-time college student during the first quarter of 1973 and not employed.

4. On December 26, 1977, the Internal Revenue Service notified petitioner that his tax increase for 1973 was reduced to \$319.00, that the delinquency penalty was reduced to \$79.75 and that the negligence penalty was eliminated. It is not clear from the federal notification how the tax of \$319.00 was computed or whether it consisted solely of income tax, or of income tax and self-employment tax. Petitioner was unable to submit additional information on this point.

5. Petitioner was a New York State resident for income tax purposes during 1973 and did not file a New York State income tax return for said year.

6. Petitioner maintains that the penalties asserted should be waived since he did not realize that a return had to be filed, as 1973 was his first year of employment.

CONCLUSIONS OF LAW

A. That petitioner has sustained his burden of proof imposed pursuant to section 689(e) of the Tax Law to establish that the federal authorities reduced the amount of unreported income attributable to him for 1973, but he has not established the exact amount. However, based on this record, it is reasonable to conclude that petitioner was an employee during 1973, not a self-employed individual. Therefore, the recomputed federal tax of \$319.00 is deemed to consist solely of federal income tax.

B. That the amount of petitioner's unreported income for 1973, reconstructed by applying the federal income tax of \$319.00 to the federal tax rate schedule for single individuals and allowing one exemption and the low income allowance, is determined to be \$4,097.37. The Audit Division is directed to recompute the Notice of Deficiency accordingly.

C. That petitioner has not shown that his failure to file an income tax return for 1973 was due to reasonable cause. Accordingly, the penalties imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are sustained.


D. That the penalty imposed pursuant to section 685(b) for negligence is cancelled.

E. That the petition of Kenneth R. Wheeler is granted to the extent noted in Conclusions of Law "B" and "D", and is in all other respects denied.

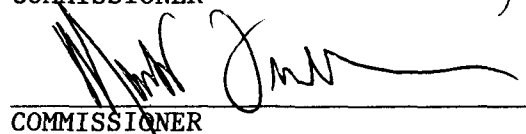
DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Kenneth R. Wheeler
121 Avenue D., Apt. #3
Melbourne, FL 32901

CERTIFIED

P 693 169 555

MAIL

CLAIM CHECK
NO.

903627

☐ HOLD

DATE

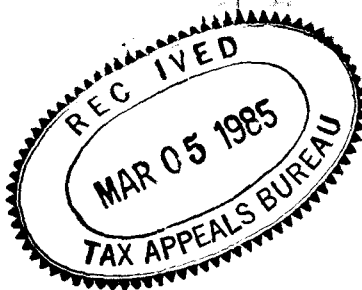
2/14/85

1ST NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3849-A
Oct. 1980



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

February 6, 1985

Kenneth R. Wheeler
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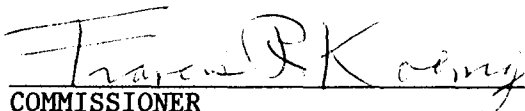
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DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985


PRESIDENT


COMMISSIONER


COMMISSIONER