

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Dorothy VanValkenburgh :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income  
Tax under Article(s) 22 of the Tax Law for the :  
Years 1973 & 1974.  
:

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of October, 1986, he/she served the within notice of Decision by certified mail upon Dorothy VanValkenburgh the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dorothy VanValkenburgh  
4348 White Rd.  
Marion, NY 14505

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 October, 1986.

Janet M. Snay

David Parchuck  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Dorothy VanValkenburgh :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
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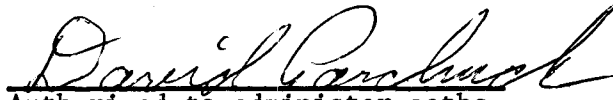
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of October, 1986, he served the within notice of Decision by certified mail upon John M. Butera, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

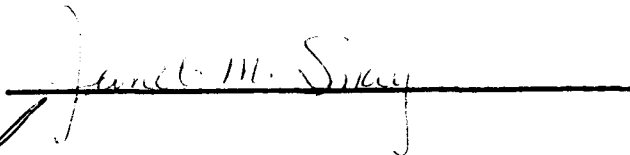
John M. Butera  
Bergmark & Bird  
503 Murray St.  
Newark, NY 14513

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 October, 1986.

  
\_\_\_\_\_  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
\_\_\_\_\_

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

October 20, 1986

Dorothy VanValkenburgh  
4348 White Rd.  
Marion, NY 14505

Dear Ms. VanValkenburgh:

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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
John M. Butera  
Bergmark & Bird  
503 Murray St.  
Newark, NY 14513

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
DOROTHY VANVALKENBURGH :  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Years 1973 and 1974. :

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Petitioner, Dorothy VanValkenburgh, 4348 White Road, Marion, New York 14505, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1973 and 1974 (File No. 44963).

A hearing was held before Timothy J. Alston, Hearing Officer, at the offices of the State Tax Commission, 259 Monroe Avenue, Rochester, New York, on June 5, 1986 at 1:15 P.M. Petitioner did not appear at the hearing. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the Audit Division's assertion of additional personal income tax due from petitioner for the year 1973 was proper.

FINDINGS OF FACT

1. On March 4, 1983, the Audit Division issued to Larry T. and Dorothy Bigley, a Statement of Audit Changes asserting additional personal income tax due from said individuals for the years 1973 and 1974 in amounts as follows:

	<u>1973</u>	<u>1974</u>
Personal Income Tax Due	\$1,920.57	\$2,556.42
Penalty	960.29	1,278.21
Total Interest	<u>1,463.75</u>	<u>1,918.37</u>
TOTAL DUE	<u>\$4,344.61</u>	<u>\$5,753.00</u>

2. The Statement of Audit Changes explained the basis for the Audit Division's assertion of additional tax due as follows:

"Since you failed to reply to our previous letters, your 1973 personal income tax liability has been computed from information obtained from the Internal Revenue Service under authorization of federal law (Section 6103(D) of the Internal Revenue Code).

Federal adjustment is due to your failure to report other compensation income.

New York tax increase is based on federal adjustment to capital gain income.

Net long term capital gains are reportable to New York State at 60% rather than 50%. Accordingly, 20% of the capital gains deduction is added to income."

3. Petitioner, Dorothy VanValkenburgh, was married to Larry T. Bigley during the years at issue and was known at that time as Dorothy Bigley.

4. Based upon the aforementioned Statement of Audit Changes, the Audit Division issued a Notice of Deficiency to Larry T. and Dorothy Bigley on March 22, 1983 asserting additional personal income tax due together with penalty and interest for the years 1973 and 1974 in like amounts as set forth in the Statement of Audit Changes.

5. Petitioner failed to appear at the hearing in this matter.

6. At the hearing the Audit Division conceded that petitioner was not liable for the tax asserted due against her for the year 1974. The Audit Division also conceded that petitioner was not liable for the penalty which had been asserted against her for both 1973 and 1974 pursuant to section 685(e) of the Tax Law.

#### CONCLUSIONS OF LAW

A. That in view of petitioner's failure to appear at the hearing, her petition is denied, except to the extent of the concessions made at the hearing by the Audit Division as set forth in Finding of Fact "6" herein.

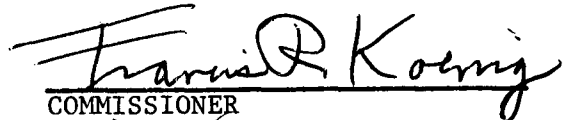
B. That the Audit Division is hereby directed to modify the Notice of Deficiency dated March 22, 1983 to the extent of the concessions set forth in Finding of Fact "6" herein and, except as so modified, the notice is in all respects sustained.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 20 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER