

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Leon F. Walrath :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
& UBT under Article(s) 22 & 23 of the Tax Law :
for the Years 1979 & 1980.

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, 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 11th day of March, 1986, he/she served the within notice of Decision by certified mail upon Leon F. Walrath the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leon F. Walrath
RD #3 Box 194
St. Johnsville, NY 13452

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
11th day of March, 1986.

David Parchuck

Daniel R. Carulli
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 11, 1986

Leon F. Walrath
RD #3 Box 194
St. Johnsville, NY 13452

Dear Mr. Walrath:

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 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	:	
	:	
LEON F. WALRATH	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax and Unincorporated	:	
Business Tax under Articles 22 and 23 of the	:	
Tax Law for the Years 1979 and 1980.	:	

Petitioner, Leon F. Walrath, RD #3, Box 194, St. Johnsville, New York 13452, filed a petition for redetermination of a deficiency or for refund of personal income tax and unincorporated business tax under Articles 22 and 23 of the Tax Law for the years 1979 and 1980 (File No. 48602).

On October 11, 1985, petitioner waived his right to a hearing and requested that a decision be rendered by the State Tax Commission based upon the Department of Taxation and Finance file and additional evidence submitted on or before November 11, 1985. Upon review of the record, the State Tax Commission renders the following decision.

ISSUES

I. Whether, for the year 1980, the Audit Division properly estimated petitioner's income subject to the imposition of New York State personal income tax.

II. Whether, for the years 1979 and 1980, the Audit Division properly estimated and/or determined petitioner's taxable business income subject to the imposition of New York State unincorporated business income tax.

III. Whether the State Tax Commission has jurisdiction to determine petitioner's tax liability for the years at issue.

FINDINGS OF FACT

1. On December 16, 1981, the Audit Division issued to Leon F. Walrath (hereinafter "petitioner") a Statement of Audit Changes which contained the following explanation:

"Our records do not show a 1980 New York State tax return filed by you, therefore, your income has been estimated and your tax liability has been computed for personal income tax and unincorporated business tax.

Also, since you were subject to unincorporated business tax for the tax year 1979 and since an unincorporated business tax return was not filed you are assessed as shown below.

<u>PERSONAL INCOME TAX</u>	<u>1979</u>	<u>1980</u>	
Adjusted gross income estimated		\$20,439.00	
Standard deductions allowable		1,197.00	
Balance		<u>\$19,242.00</u>	
Exemption		750.00	
Taxable income		<u>\$18,492.00</u>	
Tax on above		\$ 1,224.00	\$1,224.00
 <u>UNINCORPORATED BUSINESS TAX</u>			
Business income	\$15,439.00		
Business income estimated		20,439.00	
Allowance for taxpayer's services	3,088.00	<u>4,088.00</u>	
Balance	<u>\$12,351.00</u>	<u>\$16,351.00</u>	
Statutory exemption	5,000.00	5,000.00	
Taxable business income	<u>\$ 7,351.00</u>	<u>\$11,351.00</u>	
Tax on above at 4½%	\$331.00		
Tax on above at 4%		454.00	
Credit	54.50	<u>24.00</u>	
Unincorporated Business Tax Due	<u>\$277.50</u>	<u>\$430.00</u>	<u>707.50</u>
 TOTAL UNINCORPORATED BUSINESS TAX AND PERSONAL INCOME TAX			\$1,931.50
		Penalty	\$ 528.50
		Interest	\$ 166.75
		<u>TOTAL DUE</u>	<u>\$2,626.75"</u>

Accordingly, on August 19, 1983, the Audit Division issued to petitioner a Notice of Deficiency covering the taxable years 1979 and 1980 which asserted additional tax due of \$1,931.50, plus penalty of \$712.04 and interest of \$561.79, for a total amount due of \$3,205.33.

2. For the years at issue, petitioner subcontracted with United States Parcel Services of New York, Inc. (hereinafter "UPS") to repair UPS trucks. Petitioner timely filed a New York State Income Tax Resident Return for the year 1979 and paid the tax shown on said return to be due. For the year 1980, petitioner did not file a New York State income tax return. Petitioner did not file a New York State unincorporated business tax return for 1979 or 1980.

3. Petitioner presented no documentary evidence to refute the determinations of the Audit Division, but, instead, submitted voluminous material in which he challenges the constitutionality of various State and Federal taxing statutes and contends, among other things, that:

a. the State Tax Commission has no jurisdiction to assess or determine his tax liability;

b. the currency in use is not legal tender and that, since he receives nothing, he owes nothing;

c. no authority exists which requires him to file New York State income tax returns and pay taxes shown to be due thereon.

4. On October 11, 1985, petitioner waived his right to a hearing and requested that the matter be decided by the State Tax Commission based on the Department of taxation file and briefs to be filed.

CONCLUSIONS OF LAW

A. That section 681(a) of the Tax Law provides, in pertinent part, that:

"If a taxpayer fails to file an income tax return required under this article, the tax commission is authorized to estimate the taxpayer's New York taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer."

B. That since petitioner failed to file a 1980 New York State income tax return, the Audit Division was authorized to estimate his New York taxable

income from the information in its possession. Petitioner presented no credible evidence to sustain his burden of proof imposed by section 689(e) of the Tax Law to show that the Audit Division's estimate was erroneous or improper.

C. That section 722(a) of the Tax Law specifically incorporates the provisions of sections 681(a) and 689(e) of the Tax Law. Since petitioner failed to file an unincorporated business tax return for 1979 and 1980, the Audit Division was authorized to estimate his taxable business income for the years at issue. Petitioner presented no credible evidence to sustain his burden of proving that the Audit Division's estimate of unincorporated business tax due was erroneous or improper.

D. That section 697(a) of the Tax Law provides, in pertinent part, as follows:

"The tax commission shall administer and enforce the tax imposed by this article and it is authorized to make such rules and regulations, and to require such facts and information to be reported, as it may deem necessary to enforce the provisions of this article."

Section 722(a) of the Tax Law specifically incorporates the provisions of section 697(a) to make these procedural provisions applicable to the administration of the unincorporated business income tax imposed by Article 23 of the Tax Law.

E. That sections 681(a) and 722(a) of the Tax Law authorize the issuance of a Notice of Deficiency by the State Tax Commission.

F. That subdivision twenty-first of section 171 of the Tax Law authorizes the State Tax Commission to provide a hearing to a person seeking review of any taxes determined or claimed to be due, provides that the State Tax Commission shall give notice of its decision to such person after hearing and further provides that such decision shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules.

G. That 20 NYCRR 601.8(d) authorizes, in lieu of an oral hearing, submission of the controversy with a decision to be rendered by the State Tax Commission based upon the entire file plus any additional documents submitted within 30 days of the election of hearing by submission. On October 11, 1985, petitioner made such election to submit this controversy.

H. That the State Tax Commission, therefore, has jurisdiction to determine petitioner's tax liability.

I. That claims such as those by petitioner regarding the legality of Federal Reserve Notes were addressed and rejected by the courts. See, e.g. United States v. Moore, 627 F.2d 830 (7th Cir. 1980), cert. denied, 450 U.S. 916 (1981). "These claims have been repeatedly rejected by every court to hear them" [Jones v. United States, 551 F.Supp.578 (1982)].

J. That pursuant to the provisions of sections 689(e) and 722(a) of the Tax Law, petitioner has the burden of proving that he is not a person subject to the New York State personal income tax and unincorporated business income tax imposed by Articles 22 and 23 of the Tax Law, respectively. Petitioner has not met his burden of proof.


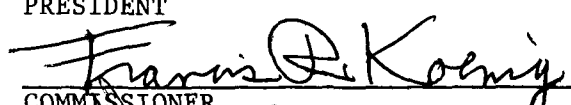

K. That the laws of New York State are presumed to be constitutionally valid at the administrative level of the State Tax Commission.

L. That the petition of Leon F. Walrath is denied and the Notice of Deficiency dated August 19, 1983 is sustained, together with such additional penalty and interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 11 1986


PRESIDENT

COMMISSIONER

COMMISSIONER