

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Martha Bruntrop :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for :
Refund of New York State Personal Income Tax :
under Article 22 of the Tax Law and New York :
City Personal Income Tax under Chapter 46, :
Title T of the Administrative Code of the :
City of New York for the Year 1982.

State of New York :

ss.:

County of Albany :

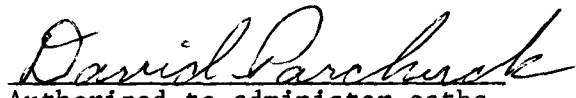
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 15th day of April, 1987, he/she served the within notice of Decision by certified mail upon Martha Buntrop the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Martha Bruntrop
778 Seneca Ave.
Ridgewood, NY 11385

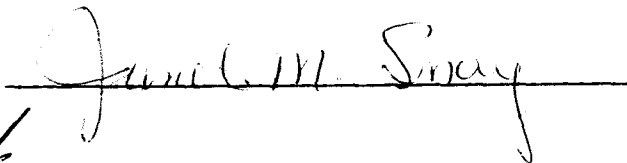
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
15th day of April, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Martha Bruntrop :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Personal Income Tax under Chapter 46, Title T :
of the Administrative Code of the City of New :
York for the Year 1982.

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 15th day of April, 1987, he served the within notice of Decision by certified mail upon Richard Bruntrop, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard Bruntrop
778 Seneca Ave.
Ridgewood, NY 11385

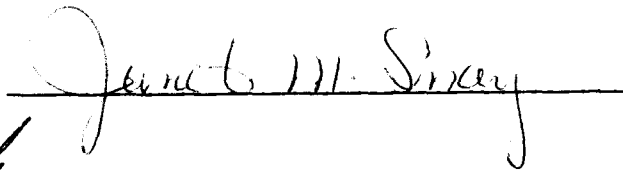
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
15th day of April, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



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

April 15, 1987

Martha Bruntrop
778 Seneca Ave.
Ridgewood, NY 11385

Dear Mrs. Bruntrop:

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 & 1312 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
Richard Bruntrop
778 Seneca Ave.
Ridgewood, NY 11385

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MARTHA BRUNTROP	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law and New York	:	
City Personal Income Tax under Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the Year 1982.	:	

Petitioner, Martha Bruntrop, 778 Seneca Avenue, Ridgewood, New York 11385, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1982 (File No. 67862).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 1, 1986 at 1:15 P.M. Petitioner appeared by her spouse, Richard Bruntrop. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioner timely filed a petition for redetermination of a deficiency.

II. Whether the Audit Division properly disallowed petitioner's New York itemized deductions.

FINDINGS OF FACT

1. Petitioner, Martha Bruntrop, together with her husband, Richard Bruntrop, timely filed a 1982 New York State and City Resident Income Tax Return wherein they elected a filing status of "married filing separately on one return". The address listed on said return was 787 Cypress Avenue, Ridgewood, New York.

2. In the computation of New York taxable income for 1982, petitioner claimed credit of \$4,100.00 for New York itemized deductions. Petitioner and her husband filed a joint Federal income tax return for 1982 and on said Federal return claimed credit for the zero bracket amount and did not claim itemized deductions.

3. On August 1, 1985, the Audit Division issued a Statement of Audit Changes to petitioner for 1982 which contained, inter alia, the following explanation:

"Since you were allowed the zero bracket amount on your Federal return, you may not claim itemized deductions on your New York return. Therefore, the standard deduction has been allowed."

The Audit Division increased petitioner's New York taxable income for 1982 by \$1,600.00, the difference between claimed New York itemized deductions of \$4,100.00 and the maximum New York standard deduction of \$2,500.00.

4. On October 29, 1985, the Audit Division issued a Notice of Deficiency against petitioner for 1982 asserting additional New York State and City tax due of \$172.74, plus interest of \$48.07, for a total allegedly due of \$220.81. Said notice was mailed to petitioner at the address shown on her return, 787 Cypress Avenue, Ridgewood, New York. There is no evidence in the record to indicate that the notice was ever returned to the Audit Division as undeliverable.

5. In June of 1985, prior to the Audit Division's issuance of both the Statement of Audit Changes and Notice of Deficiency, petitioner and her husband were forced to move from their apartment at 787 Cypress Avenue, Ridgewood, New York. In November of 1985, Mr. and Mrs. Bruntrop moved into a new apartment at 778 Seneca Avenue, Ridgewood, New York. During the interim period between apartments, petitioner and her husband resided with relatives.

6. Petitioner asserts that she did not receive the Notice of Deficiency dated October 29, 1985, and that the first notification she received advising her that taxes were due for 1982 were two notices and demands for payment of income tax due dated March 7, 1986. On March 20, 1986, petitioner protested the assessment of additional tax due for 1982. Petitioner asserts that her protest letter dated March 20, 1986 should be considered a timely petition since it was postmarked well within 90 days of her first receipt of a document notifying her that taxes were due for 1982 (i.e. the two notices and demands dated March 7, 1986). The Audit Division maintains that the Notice of Deficiency dated October 29, 1985 was properly issued to petitioner at her last known address; that the time period for the filing of a timely petition for redetermination expired 90 days after issuance of the Notice of Deficiency (i.e. January 27, 1986); and that petitioner's protest letter dated March 20, 1986 was not timely.

7. Petitioner did not notify the Tax Commission of her change of address from 787 Cypress Avenue, Ridgewood, New York to 778 Seneca Avenue, Ridgewood, New York.

8. At the hearing held herein, petitioner conceded that she could not claim New York itemized deductions since she did not claim itemized deductions for Federal income tax purposes. An amended return for 1982 was submitted in

evidence wherein the \$2,500.00 maximum standard deduction was divided between petitioner (\$2,325.00) and her husband (\$175.00). Additional tax of \$57.30¹ was shown to be due on said amended return.

CONCLUSIONS OF LAW

A. That Tax Law § 681(a) provides that:

"A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at his last known address in or out of this state."

B. That Tax Law § 691(b) defines a taxpayer's last known address as:

"the address given in the last return filed by him, unless subsequently to the filing of such return the taxpayer shall have notified the tax commission of a change of address."

C. That, in the instant matter, petitioner failed to provide notification of a change of address and, therefore, the Notice of Deficiency issued to her at her 787 Cypress Avenue address was properly mailed to her last known address.

D. That Tax Law § 689(b) provides that "within ninety days...after the mailing of the notice of deficiency...the taxpayer may file a petition with the tax commission for a redetermination of the deficiency". Thus, petitioner's protest/petition would be timely only if filed on or before January 27, 1986. Since petitioner's protest/petition was filed on March 20, 1986, it is clearly not timely filed.

E. That in view of the fact that the protest/petition was untimely, Issue II is rendered moot.


1 On their amended return, petitioner and her husband failed to take into consideration the \$122.00 which was refunded to them upon the filing of their original return. Corrected tax due per the amended return is \$177.30 (\$57.30 + \$122.00), or \$4.56 more than the tax shown due on the Notice of Deficiency.

F. That the petition of Martha Bruntrop is in all respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1987


PRESIDENT


COMMISSIONER


COMMISSIONER