

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Anna O'Hagan :

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 1979 - 1981.

State of New York :

ss.:

County of Albany :

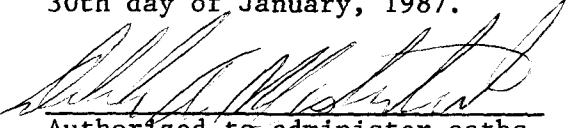
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 30th day of January, 1987, he/she served the within notice of decision by certified mail upon Anna O'Hagan the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

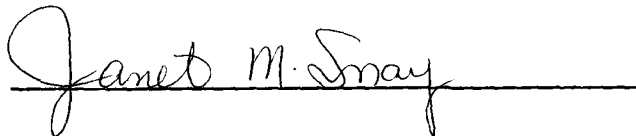
Anna O'Hagan
57 Oak Road
Briarcliff Manor, New York 10510

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
30th day of January, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

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of
Anna O'Hagan :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
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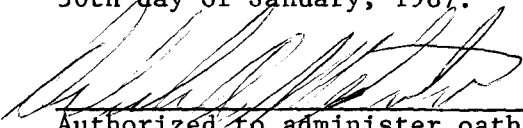
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 30th day of January, 1987, he served the within notice of decision by certified mail upon Robert C. Leonard, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

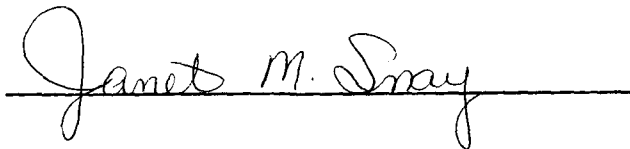
Robert C. Leonard
1027 Park Street
Peekskill, NY 10566

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
30th day of January, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

January 30, 1987

Anna O'Hagan
57 Oak Road
Briarcliff Manor, New York 10510

Dear Ms. O'Hagan:

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:
Robert C. Leonard
1027 Park Street
Peekskill, NY 10566

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

ANNA O'HAGAN : DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Taxes under Article :
22 of the Tax Law for the Years 1979, 1980 and :
1981.

Petitioner, Anna O'Hagan, 57 Oak Road, Briarcliff Manor, New York 10510, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1979, 1980 and 1981 (File No. 54635).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 10, 1986 at 10:45 A.M., with all briefs to be submitted by December 19, 1986. Petitioner appeared by Robert C. Leonard, P.A. The Audit Division appeared by John P. Dugan, Esq. (Michael J. Glannon, Esq., of counsel).

ISSUE

Whether the Audit Division properly attributed additional personal income to petitioner in the form of a constructive dividend from a corporation in which she was the sole shareholder.

FINDINGS OF FACT

1. On March 30, 1984, the Audit Division issued to petitioner, Anna O'Hagan, a Notice of Deficiency, asserting additional personal income tax due for the years 1979, 1980 and 1981 in the amounts of \$10,034.68, \$19,197.26 and \$20,769.32, respectively plus interest and negligence penalties pursuant to Tax Law § 685(b).

2. Mrs. O'Hagan is the president and sole shareholder of Manor Beef House Corporation ("Manor") which operates a restaurant in Briarcliff Manor, New York.

3. The Audit Division conducted a sales tax field audit of Manor for the period December 1, 1978 through February 28, 1982 which disclosed substantial underreporting of taxable sales. Manor agreed to the Audit Division's findings.

4. The sales tax audit findings were used to calculate corporation franchise tax due from Manor for fiscal years 1979, 1980 and 1981. Manor's gross receipts were treated as a constructive dividend to Mrs. O'Hagan, increasing her taxable income accordingly. The Audit Division reviewed Mrs. O'Hagan's personal income tax returns for 1979, 1980 and 1981, but it did not employ an indirect audit method to corroborate its determination that Mrs. O'Hagan received unreported income from Manor.

5. Following a Tax Appeals Bureau conference, Manor provided the Audit Division with proof of business expenses and cost of goods sold, resulting in a reduction in its corporation franchise tax liability. As a result, the deficiency asserted against Mrs. O'Hagan for the years at issue has been reduced to \$8,691.91. Manor has agreed to the deficiency asserted against it.

6. Mrs. O'Hagan received no income from Manor during the years at issue. The business was operated by her grandson, John F. O'Hagan, who was authorized to write checks from the corporation's account and to supervise every aspect of the restaurant's affairs. During the audit period, Mr. O'Hagan used corporate receipts to repay loans and to make expenditures not properly deductible by the corporation as business expenses. Mrs. O'Hagan is now in her eighties. She has never been personally involved in Manor's operations.

CONCLUSIONS OF LAW

A. That the Tax Commission has previously decided that the results of a sales tax audit may properly be employed as a basis to assert an income tax deficiency. (See, e.g., Matter of William T. Kelly, State Tax Commn., December 31, 1984). However, Mrs. O'Hagan has shown that Manor's receipts were not properly attributable to her as personal income.

B. That the petition of Anna O'Hagan is granted, and the Notice of Deficiency issued on March 30, 1984 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 30 1987

Rodriguez-Clin
PRESIDENT

Francis R. Koemp
COMMISSIONER

[Signature]
COMMISSIONER