

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MICHAEL J. and MARY E. FAHY

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 and 23 of the
Tax Law for the Year(s) 1969, 1970 and:
1971.

State of New York
County of Albany

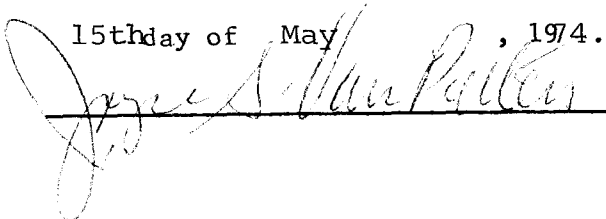
Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of May , 19 74 she served the within
Notice of Decision (or Determination) by (certified) mail upon Michael J. and
Mary E. Fahy (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Michael J. Fahy
177 Butler Road
Sauquoit, New York 13456

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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 May , 1974.


James S. Han Patten


Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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age, and that on the 15th day of May , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Carl F. Guy,
Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Carl F. Guy, Esq.

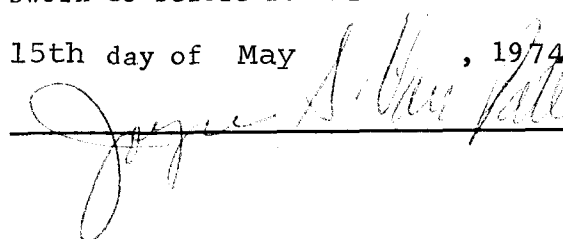

1643 West Genesee Street
Syracuse, New York 13202

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15th day of May , 1974



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

Mario A. Procaccino
~~XXXXXXXXXX~~, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York

May 15, 1974

Mr. & Mrs. Michael J. Fahy
177 Butler Road
Sauquoit, New York 13456

Dear Mr. & Mrs. Fahy:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690** of
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MICHAEL J. and MARY E. FAHY	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Years 1969, 1970 and 1971.	:	

Michael J. and Mary E. Fahy petitioned for a redetermination of deficiencies in personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1969, 1970 and 1971.

A formal hearing was held at the offices of the State Tax Commission, Utica, New York, on October 25, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Carl F. Guy, Esq., and the Income Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq., of Counsel).

ISSUES

A. Whether the taxpayer, Michael J. Fahy, is liable for deficiencies in personal income taxes for the years 1970 and 1971 and in unincorporated business taxes for 1969, 1970 and 1971 and penalties under sections 685(a) and 685(c) of the Tax Law.

B. Whether the taxpayer is liable for a \$950 penalty under section 685(i) of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Michael J. and Mary E. Fahy, timely filed New York State income tax returns for the years 1969 and 1970 but not for 1971. He filed no unincorporated business tax returns for any year in question.

2. A Notice of Determination of deficiencies in personal income and unincorporated business taxes as well as for penalties under sections 685(a) and 685(c) of the Tax Law for the years 1969, 1970 and 1971 was issued on April 13, 1973, against Michael J. Fahy under File No. 2-29869248.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. While the taxpayer, Michael J. Fahy, filed income tax returns for the years 1969 and 1970, he filed no return for the year 1971.

5. The taxpayer's return for 1970, however, consisted of a blank form accompanied by a protest.

6. The taxpayer alleged that Federal Reserve Notes are mere bookkeeping transactions and not money or legal tender and therefore he received no income.

7. The taxpayer alleged in his protest that his church looks upon abortion as murder and that his tax monies are being used to pay for abortions. That payment of taxes would violate his conscience under freedom of religion under the First Amendment and that payment of taxes for abortions would take his property contrary to the Fifth Amendment of the Constitution.

8. The taxpayer further alleged that under the present tax

laws he is being denied equal protection of the law. The taxpayer alleged that over 300 Americans in recent years with incomes of over \$200 avoided all Federal taxes, that New York's Governor Rockefeller paid only \$685 Federal income taxes for the year 1966 and that 350,000 tax-exempt organizations pay no taxes. The taxpayer asserted these matters as a denial of equal protection of the law.

9. At the hearing the taxpayer testified to his constitutional objections but on cross-examination with advice of counsel, the taxpayer invoked the Fifth Amendment and ultimately the taxpayer rested his case, absent any substantial proof, against the deficiencies or tax.

10. Prior to the determination of deficiencies, the examiner had sought to examine the taxpayer's records many times without success. Finally a subpoena was directed to the Marine Midland Bank - Central Utica, and the taxpayer sought to squash the subpoena by a show cause order of the New York State Supreme Court. On December 14, 1972, the Court denied the taxpayer's motion and upheld the examiner's subpoena.

11. Thereafter the examiner reconstructed income by using bank records and what other information he could obtain from available public records and investigation.

12. A number of meetings or conferences were scheduled with taxpayer but on last minute phone calls by the taxpayer they were adjourned or cancelled for one reason or another. And in due course, a subpoena was served on Mr. Fahy with the

same result.

13. Ultimately the examiner served a Notice and Demand for personal income tax penalty in the amount of \$950 under section 685(i) of the 685 Tax Law.

14. The taxpayer asserted that the penalty under 685(i) was illegal and his payment should be refunded.

15. There are no indications that Mary E. Fahy had income and excepting one notice her name does not appear on the bulk of the papers herein.

CONCLUSIONS OF LAW

A. There are no deficiencies against Mary E. Fahy.

B. Under the Tax Law, in innumerable cases, the receipt of cash assets and many other valuables in work or business, constitute earned income which is taxable income. The taxpayer's receipts and credits and deposits constituted income and no weight is given to the taxpayer's allegation that the Federal Reserve Notes or banked items did not constitute money or income.

C. The assertion of the conscientious or religious conviction of the taxpayer as an objection to the payment of taxes or as a tax protest have not been upheld in courts, and taxpayer's assertion is not upheld here. (Susan Jo Russell v. Comm., 60TC No. 98; U.S. v. Wm. C. Douglas, 476 F. 2d 260 (affirming prison sentence.)

D. Respecting assertion of the First, Fifth and Fourteenth Amendments as a bar to the taxes, the constitutionality of the laws of New York is presumed by the New York State Tax Commission. There is no jurisdiction at the administrative level to decide

the constitutionality of a law.

E. Respecting the assertion and collection of a \$950 penalty under section 685(i), as reflected in File No. 0-69210732 for the year 1970, the taxpayer committed no fraud the the penalty must be and hereby is cancelled. It is ordered that the refund of payments thereon will be applied to taxpayer's other tax liabilities.


F. The taxpayer's petition except as allowed in the above paragraph is in all respects denied.

G. The deficiencies in personal income and unincorporated business taxes and penalties for all the years under File No. 2-29869248 dated April 13, 1973, are in all respects sustained.

H. Pursuant to the Tax Law interest shall be added to the total amount of tax due until paid.

DATED: Albany, New York
May 15, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER