

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY W. BIDWELL

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

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article ~~(x)~~ 23 of the
Tax Law for the Year(s) 1967 and 1968:

State of New York
County of Albany

JANET MACK

, 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 20th day of March, 1975, she served the within
Notice of Decision ~~(or Determination)~~ by (certified) mail upon Harry W. Bidwell

~~Representative of~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Harry W. Bidwell

26 Winthrop Lane
Scarsdale, New York 10583

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)~~
~~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

20th day of March, 1975.

Latherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY W. BIDWELL

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

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article ~~(x)~~ 23 of the
Tax Law for the Year(s) 1967 and 1968. :

State of New York
County of Albany

JANET MACK, 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 20th day of March, 1975, she served the within
Notice of Decision (~~by Decision~~) by (certified) mail upon Stephan Zneimer, C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Stephan Zneimer, C.P.A.

116 South Main Street
Wilkes-Barre, Pennsylvania 18701

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

20th day of March, 1975.

Lachene D. Manley

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Saul Beckelman, Acting President
~~XXXXXXXXXXXXXXXXXXXX~~

A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
March 20, 1975

Mr. Harry W. Bidwell
26 Winthrop Lane
Scarsdale, New York 10583

Dear Mr. Bidwell:

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

Please take further notice that pursuant to
Section (~~8~~) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HARRY W. BIDWELL	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1967 and 1968.	:	

Harry W. Bidwell, 26 Winthrop Lane, Scarsdale, New York 10583, filed a petition for the redetermination of a deficiency issued under date of July 31, 1972, in the amount of \$2,343.99 plus interest of \$512.95 for a total of \$2,856.94 for unincorporated business income tax under Article 23 of the Tax Law for the years 1967 and 1968.

A hearing was duly held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by John F. Stapert of the offices of Stephan Zneimer, C.P.A. of Wilkes-Barre, Pennsylvania. The Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by Alexander Weiss, Esq. The record of said hearing has been duly examined and considered.

ISSUES

The issues in this case are the timeliness of the petitions of a hearing and, on the merits, whether the petitioner, an outside salesman, was engaged in an unincorporated business.

FINDINGS OF FACT

1. Petitioner resided during the years in question at 26 Winthrop Lane, Scarsdale, New York.

2. Petitioner and his wife filed joint New York personal income tax returns. These showed salaries received of \$38,933.21 in 1967 and \$46,817.08 in 1968. Credits for withheld taxes were claimed and withholding statements attached, however, only for salaries in the amounts of \$10,460.09 for 1967 and \$11,462.12 for 1968. These salaries were paid by Samuel Kaplan & Sons, Inc. of 209 West 38th Street, New York, New York. Petitioners paid estimated taxes in both years.

3. Petitioner has provided evidence and it is found that he worked as a salesman during the years in question for Foamline, Inc. of 80 Beckwith Avenue, Paterson, New Jersey, which is a division of Samuel Kaplan & Sons, Inc. and whose President is Murray S. Kaplan.

4. The Income Tax Bureau proposed a Statement of Audit Changes in this case on December 31, 1971, in the amount of \$2,343.99 plus interest of \$430.91 for a total of \$2,774.90.

5. The petitioner protested these audit changes in a letter received on February 8, 1972.

6. A formal conference was held on May 2, 1972, by A. Salmini of the Income Tax Bureau. This had been scheduled by a letter dated March 20, 1972. An accountant appeared at the conference for the petitioner.

7. The deficiency notice in this case was mailed to the petitioner on July 31, 1972. It incorporated by reference the Statement of Audit Changes and brought the computation of interest up to date to arrive at a total of \$2,856.94.

8. The petition in this case was sworn to on Monday, October 30, 1972; it was filed by mail postmarked October 30, 1972, and received on November 1, 1972.

9. A calendar call was held in the case on May 22, 1974. This was attended by petitioner's accountant.

CONCLUSIONS OF LAW

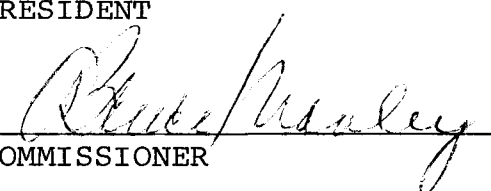
The petition was filed more than 90 days after the deficiency notice was issued. The petition is, therefore, untimely and the Commission cannot consider the petition on the merits.


DATED: Albany, New York

STATE TAX COMMISSION

March 20, 1975

PRESIDENT


COMMISSIONER


COMMISSIONER