

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM H. & BARBARA OLIVER

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

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1963 & 1964 :

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 8th day of November, 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon D. A. PARISI

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:


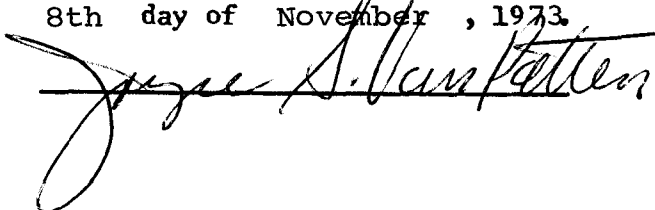
Mr. D. A. Parisi
151 Barrett Street
Schenectady, New York 12305

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

8th day of November, 1973.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM H. & BARBARA OLIVER

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

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1963 & 1964 :

State of New York
County of Albany

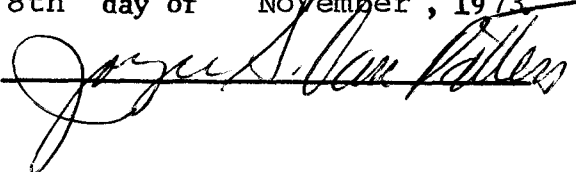

MARTHA FUNARO , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 8th day of November , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon WILLIAM H. &
BARBARA OLIVER (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. William H. Oliver
1378 First Avenue
New York, New York

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

8th day of November , 1973



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
~~FRANK X. KAY~~, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
November 8, 1973

Mr. & Mrs. William E. Oliver
1378 First Avenue
New York, New York

Dear Mr. & Mrs. Oliver:

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

Please take further notice that pursuant to **sections 690 & 722**
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	:	
WILLIAM H. and BARBARA OLIVER	:	DECISION
for 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 1963 and 1964.	:	

Petitioners, William H. and Barbara Oliver, 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 1963 and 1964.

A formal hearing was held at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on January 17, 1973, before L. Robert Leisner, Hearing Officer. The taxpayers were represented by D.A. Parisi, P.A., and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUES

I. Is the taxpayers' petition for a redetermination of deficiency timely for the year 1963?

II. Are unreported bank deposits and disallowed road expenses for 1964 taxable as personal income and unincorporated business income?

FINDINGS OF FACT

1. Petitioners, William H. and Barbara Oliver, timely filed New York State income and unincorporated business tax returns for the year 1963. They filed an income tax return, but failed to file an unincorporated business tax return for 1964.

2. A Notice of Determination of deficiencies in personal income and unincorporated business taxes for the year 1963 was issued on April 10, 1967, against the taxpayers under File No. 4-26107521. A Notice of

Determination of deficiencies in personal income and unincorporated business taxes for the year 1964 was issued on July 31, 1967, under File No. 26107521.

3. The taxpayers petitioned for redetermination of the deficiencies for both years 1963 and 1964. The petition was dated August 30, 1967, and is within the 90-day limitation for the 1964 Notice of Determination of deficiencies, but not within the 90-day limitation for the 1963 Notice of Determination of deficiencies.

4. In 1964, the taxpayers were engaged in an unincorporated business. A field audit by the Department of Taxation and Finance showed an understatement of income in the amount of \$8,500.00 for 1964. A discrepancy in road expenses of \$284.14 was also noted for this year. The audit was conducted through an examination of cash receipts, journal books, local bank deposits and Marine Midland Bank deposits.

5. The taxpayers contended the \$8,500.00 could have been cash from stock market dealings or could have been checks redeposited from another bank. They failed to present convincing evidence to what this money actually represented or to refute the respondents' determination that it was simply unreported personal and unincorporated business income.

6. The taxpayers did not contest the \$284.14 discrepancy in 1964 road expenses. They gave no explanation of their failure to file an unincorporated business tax return for the year 1964.

CONCLUSIONS OF LAW

A. Pursuant to Tax Law section 689(b), the taxpayers' petition was not timely filed as regards the Notice of Determination of deficiencies for 1963. The petition is denied and the determination of the deficiency in income tax and unincorporated business tax is sustained for that year.

B. The taxpayers failed to sustain the burden of proof that for 1964 the unreported bank deposits and the discrepancy in road expenses discovered by the audit should not be taxed as personal and unincorporated business income pursuant to Articles 22 and 23 of the Tax Law. The petition as regards 1964 is denied and the determination of the deficiency in income tax and unincorporated business tax is sustained. The penalty for the 1964 failure to file an unincorporated business tax return is sustained.

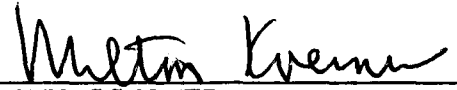
C. Pursuant to the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York
November 8, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER