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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

F. RANDALL SMITH

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1967.

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

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 13th day of September, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon F. RANDALL SMITH c/o ARTHUR K. MASON, ESQ. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

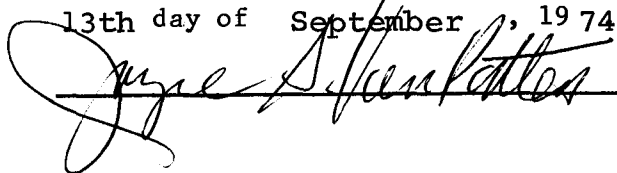
Mr. F. Randall Smith
c/o Arthur K. Mason, Esq.
1001 Connecticut Avenue, N.W.
Room 800
Washington, D.C. 20036

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

13th day of September, 1974





STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
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
September 13, 1974

Mr. F. Randall Smith
c/o Arthur K. Mason, Esq.
1001 Connecticut Avenue, N.W.
Room 800
Washington, D.C. 20036

Dear Sir:

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

Please take further notice that pursuant to
Section(s) **690** 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,


Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| F. RANDALL SMITH | : | DECISION |
| for a Redetermination of a Deficiency | : | |
| or for Refund of Personal Income Taxes | : | |
| under Article 22 of the Tax Law for the | : | |
| Year 1967. | : | |

Petitioner, F. Randall Smith, has filed a petition for redetermination or for refund of personal income tax under Article 22 of the Tax Law for the year 1967. (File No. 8-29866473). A formal hearing was scheduled at the offices of the State Tax Commission, 80 Centre Street, New York, New York, for October 18, 1973, at 2:45 P.M. On October 23, 1973, petitioner's representatives, Hydeman & Mason, Esqs. waived a formal hearing and requested that the State Tax Commission decide the case upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUES

I. Did petitioner, F. Randall Smith, file a New York State resident income tax return for the year 1967?

II. How much additional personal income tax is due and owing by petitioner, F. Randall Smith, for the year 1967?

FINDINGS OF FACT

1. Petitioner, F. Randall Smith, failed to file a New York State resident income tax return for the year 1967.

2. On July 27, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, F. Randall Smith, imposing personal income tax for the year 1967 in the sum of \$7,917.30. It also imposed a penalty in the sum of \$1,979.32 pursuant to section 685(a) of the Tax Law for failure to file a 1967 New York State income tax return. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$10,981.05.

3. Petitioner, F. Randall Smith, was a stockbroker associated with the firm of Sellin, Forbes & Smith. In 1967, said firm withheld New York State personal income tax in the sum of \$1,189.92. His New York State income was \$87,273.00 in said year. His New York State itemized deductions were \$28,150.00 in said year. His New York taxable income was \$58,523.00. The total tax due was \$5,202.30. The amount of tax withheld was \$1,189.92. The additional personal income tax due was \$4,012.38.

CONCLUSIONS OF LAW


A. That petitioner, F. Randall Smith, failed to prove that he filed a New York State resident income tax return for the year 1967, and paid any New York State personal income taxes in addition to the amount withheld by his employer.

B. That the Income Tax Bureau properly imposed a penalty pursuant to section 685(a) of the Tax Law against petitioner, F. Randall Smith, for failure to file a New York State personal income tax return for the year 1967. However, the maximum penalty that may be imposed under said section is 25% of the amount of tax required to be shown on said return reduced by any amount withheld. In the instant case, that amounts to 25% of \$4,012.38.

C. That the petition of F. Randall Smith is granted to the extent of reducing personal income tax due from \$7,917.30 to \$4,012.38 and reducing the penalty imposed by section 685(a) of the Tax Law from \$1,979.32 to \$1,003.10, together with such interest lawfully due and owing; and that except to the extent so granted, the petition is in all other respects denied.

DATED: Albany, New York
September 13, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER