

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JAMES R. CALKINS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Personal Income & Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the Year(s) ~~or Period(s)~~ 1971:

State of New York  
County of Albany

Bruce Batchelor

, being duly sworn, deposes and says that

he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 25th day of January , 1977, ~~she~~ he served the within

Notice of Decision by (certified) mail upon James R. Calkins

(~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. James R. Calkins  
96 Vista Drive  
Rochester, NY 14615

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 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

25th day of January , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES R. CALKINS

AFFIDAVIT OF MAILING

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

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 25th day of January , 1977, he served the within  
Notice of Decision by (certified) mail upon Anthony Bianchi  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Anthony Bianchi, Public Accountant  
1600 Lyell Avenue  
Rochester, NY 14606  
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 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

25th day of January , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

January 25, 1977

TELEPHONE: (516) 457-1723

Mr. James R. Calkins  
96 Vista Drive  
Rochester, NY 14615

Dear Mr. Calkins:

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

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

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. They  
will be referred to the proper party for reply.

Very truly yours,

*Frank J. Puccio*

**Frank J. Puccio**  
**Supervisor of**  
**Small Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JAMES R. CALKINS	:	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 Year 1971.	:	

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Petitioner, James R. Calkins, residing at 96 Vista Drive, Rochester, New York 14615, has filed a petition 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 year 1971. (File No. 1-84818211).

A small claims hearing was held August 10, 1976 at 10:45 A.M. at the offices of the State Tax Commission, 1 Marine Midland Plaza, Rochester, New York, before Harry Huebsch, Hearing Officer. Petitioner, James R. Calkins, appeared by Anthony Bianchi, Public Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq., (Richard Kaufman, Esq., of counsel).

ISSUE

Did petitioner, James R. Calkins, pay wages to his wife as a bona fide employee in the year 1971 and, if so, were the wages a reasonable and necessary business deduction?

FINDINGS OF FACT

1. Petitioner, James R. Calkins, filed a joint personal income tax return with his wife for the year 1971, in which he indicated his occupation as mason and that of his wife as housewife. Also, he reported his mason income as business income. Petitioner, James R. Calkins, did not file an unincorporated business tax return for said year.

2. The Income Tax Bureau held that petitioner, James R. Calkins, was self-employed and that the income resulting from his activities as a mason was subject to unincorporated business tax. Also, certain additional business expenses were found to be allowable. These additional deductions reduced the claimed amount of business net income and thereby also reduced taxable personal income.

3. The Income Tax Bureau issued a Notice of Deficiency dated March 31, 1975 in the amount of \$436.06 unincorporated business tax due, plus \$77.46 interest for a total of \$513.52. This amount was reduced by offset of a personal income tax refund due in the amount of \$93.30, plus \$16.57 interest for a total of \$109.87. The resulting net amount due was \$403.65.

4. Petitioner, James R. Calkins, subsequently filed an unincorporated business tax return in which he claimed a \$6,500.00 deduction for wages paid to his wife. This reduced the unincorporated tax due, as shown on the return, to \$90.00. Petitioner, James R. Calkins, and his wife also filed an amended personal income tax

return changing their election from joint to separate filing on Form IT-208. On the amended return the wife's column included \$6,500.00 as earnings received from her husband's business. The amended personal income tax return reflected an additional \$262.76 refund due. The Income Tax Bureau issued a Notice of Disallowance of the refund claim on May 19, 1975.

5. Petitioner, James R. Calkins, was a mason. He agreed that he was self-employed and that the income derived from his activities was subject to unincorporated business tax.

6. Petitioner, James R. Calkin's gross receipts in 1971 were \$20,033.70. This income resulted mainly from his own physical labor as a mason. He contended that his wife worked at home doing general office work and that she was paid \$125.00 per week in cash. He also contended that she worked 40 or more hours per week and that the wages were reasonable when compared to wages generally paid for office help in that area.

7. Petitioner, James R. Calkins, did not issue a withholding tax statement to his wife. No deductions were made against her compensation. Petitioner, James R. Calkin's wife had no bank account or separate property. No evidence was submitted as to the amount of household expense money received above the amount for salary nor was it shown that the wage expense was shown on the books of the company.

CONCLUSIONS OF LAW

A. That petitioner, James R. Calkins, has not sustained the burden of proof required under section 689(e) of the Tax Law, that his wife was a bona fide employee during 1971 and did in fact receive wages for services rendered.

B. That the Notice of Disallowance dated May 19, 1975 of the refund claim reflected in the amended return is sustained.

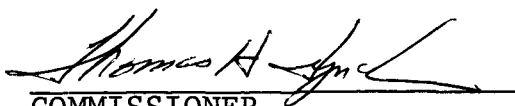
C. That the petition of James R. Calkins is denied and the Notice of Deficiency dated March 31, 1975 for the year 1971 is sustained.

DATED: Albany, New York  
January 25, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER