

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP DINCES & MILDRED DINCES

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of ~~Personal Income and~~
Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) ~~or Period(s)~~
1967 and 1968.

State of New York
County of Albany

Bruce Batchelor, 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 25th day of January, 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Philip Dinces &
Mildred Dinces (~~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. Philip Dinces
173-01 73rd Avenue
Flushing, New York 11366

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~~
~~XXXX~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) 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

PHILIP DINCES & MILDRED DINCES

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of ~~Personal Income and~~
Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) ~~or Years~~
1967 and 1968.

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 Benjamin Dinkes

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Benjamin Dinkes, CPA
509 Fifth Avenue
New York, New York 10017

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

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

January 25, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Philip Dinces
173-01 73rd Avenue
Flushing, New York 11366

Dear Mr. & Mrs. Dinces:

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

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

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
PHILIP DINCES & MILDRED DINCES :
for Redetermination of Deficiency or : DECISION
for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law :
for the Years 1967 and 1968. :

Petitioners, Philip Dinces and Mildred Dinces, residing at 173-01 73rd Avenue, Flushing, New York 11366, 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 years 1967 and 1968. (File No. 8-12203614).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on July 13, 1976, at 1:15 p.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Benjamin Dinkes, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

ISSUE

Do the amounts claimed as wages received by Mildred Dinces from Philip Dinces constitute gross income to Mildred Dinces for the taxable years 1967 and 1968 and do such wages constitute

proper deductions in computing Philip Dinces' net income from business for Federal income tax purpose as well as his taxable business income for 1967 and 1968 New York State unincorporated business tax purposes?

FINDINGS OF FACT

1. Petitioners, Philip Dinces and Mildred Dinces, timely filed New York State personal income tax returns for the years 1967 and 1968. Petitioner, Philip Dinces, timely filed New York State unincorporated business tax returns for those same years.

2. On March 29, 1971, the Income Tax Bureau issued a Notice of Deficiency against petitioners, Philip Dinces and Mildred Dinces, disallowing deductions claimed on their 1967 and 1968 personal income tax returns as wages received by Mildred Dinces from her husband, Philip Dinces.

3. On March 29, 1971, the Income Tax Bureau issued a Notice of Deficiency disallowing the wage income claimed to have been received by Mildred Dinces thereby increasing the taxable business income of Philip Dinces for unincorporated business tax purposes for the taxable years 1967 and 1968.

4. During the years 1967 and 1968, petitioner, Philip Dinces, carried on an insurance practice from his home and a sub-office located at DeKalb Avenue, Brooklyn. His wife, Mildred Dinces, performed the bookkeeping and secretarial functions connected with

the affairs of his business. The duties his wife performed included answering telephone calls, responding to written correspondence, signing checks, maintaining records and typing.

5. Mildred Dinces performed the aforesaid duties at her home. She was not assigned regular or scheduled hours of work and the claimed wages she received, for the services rendered to her husband, were paid at irregular and random intervals.

6. If Mildred Dinces did receive the claimed wages for her services, no personal income tax was withheld.

7. Petitioner, Philip Dinces, did not maintain records to show the date these claimed wages were paid, nor the amounts of such payments.

8. Petitioner, Philip Dinces, had no other employees.

CONCLUSIONS OF LAW

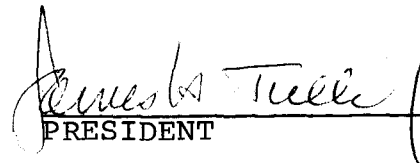
A. That petitioners, Philip Dinces and Mildred Dinces, have not sustained the burden of proof as required by section 689(e) of the Tax Law to show that payments were actually made by Philip Dinces in the years 1967 and 1968 to Mildred Dinces for services rendered in connection with the insurance business of Philip Dinces. Therefore, the amounts claimed for wage payments for 1967 and 1968 do not constitute either amounts includible in the gross income of Mildred Dinces under section 61 of the Internal Revenue Code

or proper deductions in computing Philip Dinces' net income from business for Federal income tax purposes under section 162 of the Internal Revenue Code or his taxable business income for 1967 and 1968 New York State unincorporated business tax purposes.

B. That the petition is denied and the separate Notices of Deficiency issued March 29, 1971 are sustained.

DATED: Albany, New York
January 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER