

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CLEMENT E. and ELEANOR DAVIS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (s) 22 of the :
Tax Law for the Year (s) ~~xxxx Period(x)~~ 1967.:
~~(s) xxx Period(x)~~

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 20th day of May , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Clement E. & Eleanor
Davis (~~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. Clement E. Davis
137 Boulder Road
Manhasset, New York 11030

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

Sworn to before me this

20th day of May , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CLEMENT E. and ELEANOR DAVIS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (2) 22 of the :
Tax Law for the Year ~~(1966)~~ 1967.: :

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 20th day of May , 1977, he served the within
Notice of Decision by (certified) mail upon Elsie R. Finkelstein

(representative of) the petitioner in the within proceeding,

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

Elsie R. Finkelstein, P.A.
391 Marcy Avenue
Brooklyn, New York 11206

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

20th day of May , 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

May 20, 1977

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

Mr. & Mrs. Clement E. Davis
137 Boulder Road
Manhasset, New York 11030

Dear Mr. & Mrs. Davis:

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

Please take further notice that pursuant to
Section(§) **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.

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

In the Matter of the Petition
of
CLEMENT E. and ELEANOR DAVIS
for Redetermination of a Deficiency or for
Refund of Personal Income Taxes under
Article 22 of the Tax Law for the Year 1967.

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DECISION

Petitioners, Clement E. and Eleanor Davis, residing at 137 Boulder Road, Manhasset, New York 11030, have filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1967. (File No. 13140).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on August 27, 1976 at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioners appeared by Elsie R. Finkelstein. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq., of counsel).

ISSUES

I. Whether the petitioners filed a 1967 New York State personal income tax return.

II. Whether penalties and interest imposed by the Notice of Deficiency issued July 27, 1970 should be waived.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Income Tax Bureau issued a Notice of Deficiency on July 27, 1970 on the ground that petitioner failed to file a New York personal income tax return for the year 1967 and it imposed a section 685(a) penalty, together with interest.

2. Petitioner failed to establish that they filed a return within five months from the due date.

3. The income tax return bearing a date of May 24, 1968 was filed together with a bank check dated October 22, 1968. The check was never cashed and was subsequently reissued on June 23, 1972, which was applied as a part payment of the Notice of Deficiency issued on July 27, 1970.

4. Petitioners failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, that a New York State personal income tax return was filed for the year 1967 or that reasonable cause existed for their failure to file.

5. That a 25% penalty was properly imposed against petitioner within the meaning and intent of section 685(a) of the Tax Law in that petitioners were unable to show reasonable cause for either not filing the return or the late filing of the return.

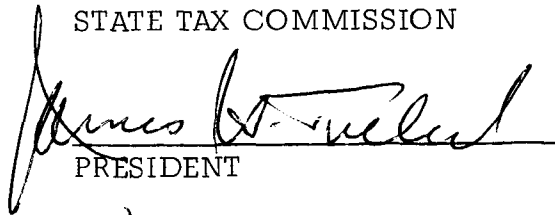
6. That interest was properly applied, pursuant to section 684 of the Tax Law and that the Tax Law does not provide for the abatement of interest properly imposed.

7. The petition of Clement E. and Eleanor Davis is granted to the extent that the payment made on June 23, 1972 is applied to reduce the Notice of Deficiency issued July 27, 1970 by \$2,253.51.

8. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued July 27, 1970, and except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
May 20, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER