

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD AND VIOLA MC QUADE

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)~~ :
1967, 1968 and 1969.

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 Edward and Viola
McQuade ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Edward McQuade
32 Airview Terrace
Depew, New York 14043

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. and Mrs. Edward McQuade
32 Airview Terrace
Depew, New York 14043

Dear Mr. and Mrs. McQuade:

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
EDWARD and VIOLA MC QUADE
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, 1968 and 1969.

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DECISION

Petitioners, Edward and Viola McQuade, residing at 32 Airview Terrace, Depew, New York 14043, filed petitions for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1967, 1968 and 1969. (File No. 9-34038956).

A small claims hearing was held September 15, 1976, at 9:15 A.M., at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, before Harry Huebsch, Hearing Officer. Petitioner, Viola McQuade, appeared pro se and for her husband. The Income Tax Bureau appeared by Peter Crotty, Esq. (Michael Weinstein, Esq. of counsel).

ISSUES

I. Were certain unsubstantiated expenses claimed, which affected both personal and unincorporated business taxable income, proper deductions?

II. Were the penalties imposed under section 685(a) and 685(a)(1) & (2) of the Tax Law for 1967, 1968 and 1969 for failure to file unincorporated business tax returns properly imposed?

FINDINGS OF FACT

1. Petitioners, Edward and Viola McQuade, filed timely New York State personal income tax returns for the years 1967, 1968 and 1969. They reported business income for each of said years. Unincorporated business tax returns were not filed for said years. A field audit by the Income Tax Bureau resulted in partial disallowance of expenses claimed in connection with the business for materials and supplies in 1967, 1968 and 1969. A claimed capital loss in 1967 and subcontractors' expenses in 1968 were also disallowed. All disallowances were made by the Income Tax Bureau because petitioners, Edward and Viola McQuade, failed to substantiate the deductions.

2. A Notice of Deficiency dated September 27, 1971, was issued to Edward McQuade for 1967, 1968 and 1969 in the amount of \$887.89 unincorporated tax due, plus \$243.47 penalty, and \$114.93 interest, for a total sum of \$1,246.29. Another Notice of Deficiency dated

September 27, 1971, was issued to Edward and Viola McQuade for these same years in the amount of \$462.25 additional personal income tax due, plus \$65.41 interest, for a total sum of \$527.66.

3. Petitioner, Edward McQuade, died April 22, 1975. His wife was appointed executrix of his estate.

4. Petitioner, Viola McQuade, did not introduce documentary evidence to substantiate expenses claimed for materials and supplies. She contended that the disallowed items were paid for out of petty cash by checks made out to herself and cashed at a grocery store near her home.

5. Petitioner, Viola McQuade, did not introduce any evidence to substantiate the capital loss or subcontractors' expenses claimed.

6. Petitioners, Edward and Viola McQuade, relied on the advice of their accountant to file whatever returns were required.

CONCLUSIONS OF LAW

A. That petitioner, Viola McQuade, individually and as executrix of the estate of Edward McQuade, failed to substantiate any of the disallowed deductions which were claimed in the years 1967, 1968 and 1969.

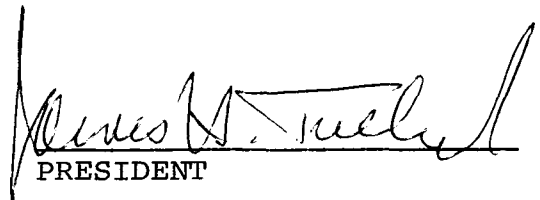
B. That the failure of petitioners to file unincorporated business tax returns for the years 1967, 1968 and 1969 was due to reasonable cause and not willful neglect and therefore, the penalties assessed pursuant to sections 685(a) and 685(a)(1)&(2) of the Tax Law are waived.

C. That the petition of Viola McQuade, as executrix of the estate of Edward McQuade, is granted to the extent of cancelling the penalties imposed pursuant to sections 685(a) and 685(a)(1)&(2) of the Tax Law for the years 1967, 1968 and 1969 in the sum of \$243.47, and the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued September 27, 1971, under Article 23 and; that except as so granted, the petition is in all other respects denied.

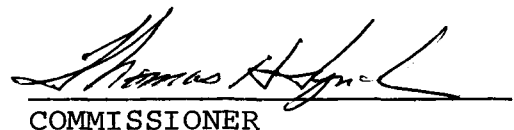
D. That the petition of Viola McQuade, individually and as executrix of the estate of Edward McQuade, filed under Article 22 of the Tax Law for the years 1967, 1968 and 1969 is denied and the Notice of Deficiency issued September 27, 1971, under Article 22 of the Tax Law is sustained.

DATED: Albany, New York
January 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER