

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RICHARD LAWRENCE YATTAW

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(8)~~ 22 of the :
Tax Law for the Year ~~(8) XXXXXXXX~~ :
1975

State of New York
County of Albany

Marsina Donnini, 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 26th day of August, 19 77, she served the within
Notice of Decision by (certified) mail upon Richard Lawrence Yattaw
~~XXXXXX~~ representative of the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Richard Lawrence Yattaw
878 River Street
Troy, New York 12180
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 ~~XXXXXX~~ representative
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ representative of the petitioner.

Sworn to before me this

26th day of August, 19 77.

Marsina Donnini

Janet Bush

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD LAWRENCE YATTAW

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (9) 22 of the :
Tax Law for the Year ~~(1976)~~ 1975 :
1975

State of New York
County of Albany

Marsina Donnini, 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 26th day of August, 1977, she served the within

Notice of Decision by (certified) mail upon Dennis B. Schlenker, Esq. of

Feit, Schlenker & Patack, Esqs. (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Dennis B. Schlenker, Esq. of
as follows: Feit, Schlenker & Patack, Esqs.
182 Washington Avenue
Albany, New York

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

26th day of August, 1977

Marsina Donnini

Just Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

August 26, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Mr. Richard Lawrence Yattaw
878 River Street
Troy, New York 12180

Dear Mr. Yattaw:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(7)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

PAUL B. COBURN
Supervising Tax
Hearing Officer

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 | : | |
| | : | |
| RICHARD LAWRENCE YATTAW | : | DECISION |
| | : | |
| for Redetermination of a Deficiency or | : | |
| for Refund of Personal Income Tax under | : | |
| Article 22 of the Tax Law for the Year | : | |
| 1975. | : | |

Petitioner, Richard Lawrence Yattaw, 878 River Street, Troy, New York 12180, 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 1975. (File No. 14000).

A formal hearing was held before Louis M. Klein, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on February 15, 1977 at 1:15 P.M. Petitioner appeared by Feit, Schlenker and Patack, Esqs. (Dennis B. Schlenker, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Marilyn Kaltenborn, Esq., of counsel).

ISSUE

1. Whether the petitioner, Richard Lawrence Yattaw should be subject to an assessment in the amount of \$984.00 on his proceeds from the sale of narcotics.

FINDINGS OF FACT

1. On November 29, 1975, the petitioner, Richard Lawrence Yattaw was arrested and charged with several counts of criminal sale of a controlled substance.

2. At the time of his arrest, petitioner had in his possession the sum of \$528.00 in cash.

3. Petitioner claims that these monies in his possession resulted not from the sale of narcotics, but rather represented the proceeds of several loans, which monies were to be paid to his attorneys, Feit and Schlenker, on account of services rendered.

4. On December 9, 1975, a Notice and Demand for Payment of Personal and Unincorporated Business Taxes Under Jeopardy Assessment was issued to petitioner, alleging a New York State taxable income of \$16,000.00, a tax thereon of \$960.00, together with a 2 1/2% surcharge in the amount of \$24.00 for a total tax due of \$984.00.

5. On December 22, 1975, a Notice of Deficiency was issued to petitioner setting forth a total deficiency for the year 1/1/75 to 12/9/75 in the amount of \$984.00.

6. Following his arrest and as a result of plea bargaining, the petitioner pled guilty to one count of criminal sale of a

controlled substance, the proceeds of which sale were \$40.00, and which sale took place on February 3, 1975.

7. During the year 1975, petitioner worked for the Rensselaer County Comprehensive Employment Training Act Program for three months, receiving no earnings but merely a stipend, which was exempt from Federal or State taxes. For the balance of 1975, he worked only sporadically, for which work taxes were regularly withheld from his salary.

8. The documentary evidence submitted by the petitioner, and the testimony offered in his behalf by Alma Ball, who was present at the time of petitioner's arrest, and who has personal knowledge of the source of the monies on petitioner's person at the time of his arrest, remains uncontroverted by the Income Tax Bureau.

9. No evidence was offered by the Income Tax Bureau to substantiate its finding that \$500.00 represented one day's proceeds from the petitioner's sale of drugs.

CONCLUSIONS OF LAW

A. That the only proof offered at the formal hearing concerning the amount of monies received from the sale of a controlled substance by the petitioner, was to the effect that \$40.00 was received therefor.

B. That since the petitioner was arrested on November 29, 1975, and subsequently pled guilty to one count of criminal sale of a controlled substance, to wit, that on February 3, 1975, he sold a controlled substance for \$40.00, the assertion of the Income Tax Bureau that the \$500.00 found on petitioner's person at the time of his arrest constituted the proceeds of one day's sale of a controlled substance, some 9 1/2 months earlier, is unsupported by the evidence introduced at the formal hearing.

C. That the jeopardy assessment levied by the Income Tax Bureau is excessive.

D. That the petition of Richard Lawrence Yattaw is granted to the extent that the tax due and surcharge thereon be computed on the basis of \$40.00 as the proceeds of his sales of controlled substances; and that the Notice of Deficiency dated December 22, 1975, be modified accordingly, and, as modified, sustained.

DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER