

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS G. and HELEN ALLETZHAUSER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income & Unincorporated Bus. :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1971 and 1973

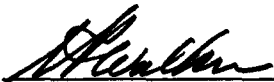
State of New York
County of

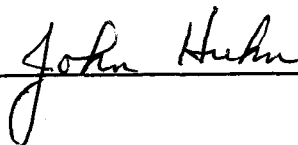
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April, 1978, she served the within
Notice of Decision by (certified) mail upon Francis G. & Helen
Alletzhauser ~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Francis G. and Helen Alletzhauser
207 Second North Street
Syracuse, NY 13208
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~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

24th day of April, 1978.







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

April 24, 1978

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

**Francis G. and Helen Alletshauser
207 Second North Street
Syracuse, NY 13208**

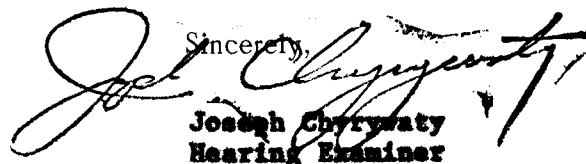
Dear Mr. & Mrs. Alletshauser:

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(s) **690 & 722** 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,


**Joseph Chyrczaty
Hearing Examiner**

~~XXXXXX-XXXXXX-XXXXXX-XXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
FRANCIS G. and HELEN ALLETZHAUSER : 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 Years 1971 and 1973. :

Petitioners, Francis G. and Helen Alletzhauser, 207 Second North Street, Syracuse, New York 13208, 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 1971 and 1973 (File Nos 13058 and 13059).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on July 26, 1977 at 9:15 A.M. Petitioner Francis G. Alletzhauser appeared pro se and for his wife, and by John G. Kimball, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUES

I. Whether petitioners had additional income during the years 1971 and 1973 which was not reported for personal income and unincorporated business tax purposes.

II. Whether penalties imposed on petitioners pursuant to sections 685(b) and (c) of the Tax Law for the year 1971 and section 685(b) of the Tax Law for the year 1973 were proper.

FINDINGS OF FACT

1. Petitioners, Francis G. and Helen Alletzhauser, timely filed New York State personal income tax returns for the years 1971 and 1973. Petitioner Francis G. Alletzhauser timely filed New York State unincorporated business tax returns for said years.

2. The Income Tax Bureau conducted an audit of petitioners' returns, books and records for the years 1971 and 1973. As a result of said audit (which utilized the source-and-application-of-funds method), the Income Tax Bureau contended that the income which Francis G. Alletzhauser received from his unincorporated business had been understated by \$12,950.00 for 1971 and \$4,420.00 for 1973.

3. The Income Tax Bureau issued a Notice of Deficiency on February 24, 1975 against petitioners, Francis G. and Helen Alletzhauser, in the amount of \$2,122.01 in personal income tax, plus \$176.43 in penalty (pursuant to sections 685(b) and (c) of the Tax Law) and \$330.88 in interest, for a total due of \$2,629.32. It also issued a Notice of Deficiency against petitioner Francis G. Alletzhauser on February 24, 1975 in the amount of \$935.70 in

unincorporated business tax, plus \$46.78 in penalty (pursuant to section 685(b) of the Tax Law) and \$136.59 in interest, for a total due of \$1,119.07.

4. Petitioners did not submit documentary or other substantial evidence in support of their petition for the year 1971.

5. For the year 1973, petitioners had an additional source of funds totaling \$3,900.00, which resulted from the sale of a motor vehicle in November of said year. The Income Tax Bureau auditor conducted the audit according to procedures subscribed to by the Department of Taxation and Finance, but had not been appraised of this source of funds by the petitioner at the time of the audit.

6. Petitioner contended that they relied on their accountant for proper filing of their New York State personal and unincorporated business tax returns. They also stated that their accountant prepared the returns from information that they had submitted to him.

CONCLUSIONS OF LAW

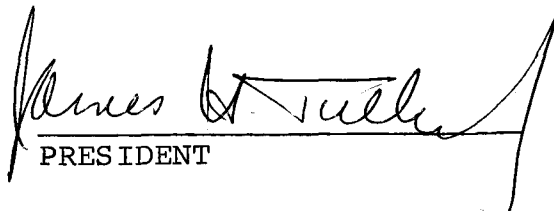
A. That petitioners, Francis G. and Helen Alletzhauser, had additional income during the years 1971 and 1973 for personal and unincorporated business tax purposes in the amount of \$12,950.00 in the year 1971 and \$520.00 in the year 1973.

B. That the penalties imposed against petitioners pursuant to sections 685(b) and 685(c) of the Tax Law for the year 1971 and section 685(b) of the Tax Law for the year 1973 were proper.

C. That the petition of Francis G. and Helen Alletzhauser is granted only to the extent of reducing the unreported income for personal income and unincorporated business tax purposes for the year 1973 from \$4,420.00 to \$520.00. The Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued February 24, 1975; that the modified amount shall be due, together with such additional interest as may be lawfully owing and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER