

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Sheldon S. & Edythe A. Haas :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1971. :

State of New York

County of Albany

Jay Vredenburg, 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 28th day of September, 1979, he served the within notice of Decision by certified mail upon Sheldon S. & Edythe A. Haas, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sheldon S. & Edythe A. Haas

1275 15th St.

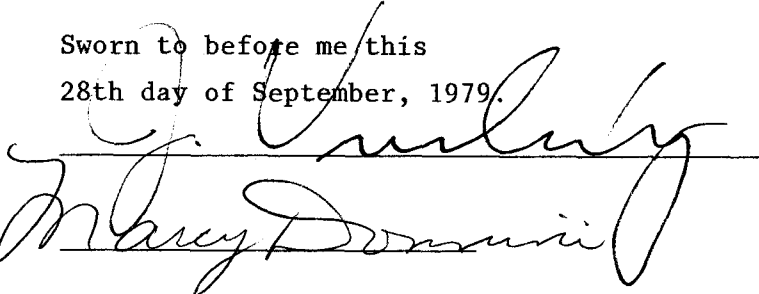
Ft. Lee, NJ 07024

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this

28th day of September, 1979.


Mary Dominici



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Sheldon S. & Edythe A. Haas
1275 15th St.
Ft. Lee, NJ 07024

Dear Mr. & Mrs. Haas:

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 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,

A handwritten signature in cursive script, appearing to read "Joel Chynoweth".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SHELDON S. HAAS and EDYTHE A. HAAS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the	:	
Year 1971.	:	

Petitioners, Sheldon S. and Edythe A. Haas, 1275 15th Street, Fort Lee, New Jersey 07024, 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 1971 (File No. 15813).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 11, 1979 at 1:15 P.M. Petitioner Sheldon S. Haas appeared pro se and for his wife, petitioner Edythe A. Haas. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

- I. Whether petitioners filed a New York State income tax return for 1971.
- II. Whether Federal and New York City income taxes which were withheld are allowable deductions from gross income on a New York State return.

FINDINGS OF FACT

1. Petitioners, Sheldon S. and Edythe A. Haas, were residents of New York City during 1971.

2. On May 24, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioners, imposing personal income tax of \$696.63, on the grounds that it had no record of petitioners' filing a New York State income tax return for 1971. The Income Tax Bureau computed petitioners' liability based

on a married-filing-jointly status (Form IT-201). It allowed four exemptions and a standard deduction of \$1,500.00. In addition, penalties were imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law.

3. Petitioners submitted a copy of their 1971 Federal income tax return which reported employee business expenses for Sheldon S. Haas of \$490.00 and Federal itemized deductions of \$3,712.08, of which \$951.08 was for state and local income taxes. The Income Tax Bureau did not dispute these amounts.

4. Petitioners submitted copies of wage and tax statements which indicated that gross wages of \$13,424.32 were paid to Sheldon S. Haas, and that Federal, New York State and New York City taxes were withheld in the amounts of \$1,980.21, \$281.41 and \$94.92, respectively. Other wage statements indicated that gross wages of \$11,506.42 were paid to Edythe A. Haas, and that Federal, New York State and New York City taxes were withheld in the amounts of \$1,845.22, \$437.85 and \$136.90, respectively.

5. Petitioners maintained that they timely filed their New York State resident income tax return for 1971.

6. Petitioners contended that they should be allowed to deduct the Federal and New York City taxes which were withheld from New York State gross income because they had no use of the money so withheld, and that this is equivalent to paying a tax on a tax.

CONCLUSIONS OF LAW

A. That petitioners, Sheldon S. and Edythe A. Haas, have not sustained the burden of proof imposed by section 689(e) of the Tax Law, which requires them to establish that they did, in fact, file a New York State resident income tax return.

B. That section 275 of the Internal Revenue Code provides that no deduction shall be allowed for the tax withheld at the source on wages, under section 3402 of the Internal Revenue Code (James Summers v. Commissioner, 33 TCM 695,

Dec. 32, 650(m)).

C. That the New York itemized deduction of a resident individual means the total amount of his deductions from Federal adjusted gross income, other than Federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year, with the modifications specified in section 615 of the Tax Law.

D. That New York City tax which is withheld is a modification reducing Federal itemized deductions, in accordance with section 615(c)(1) of the Tax Law.

E. That the Income Tax Bureau is hereby directed to recompute the Notice of Deficiency issued on May 24, 1976 based on the married-filing-separate status, which allows Sheldon S. Haas \$490.00 in employee business expenses, \$2,094.45 in New York itemized deductions and two exemptions, and that Edythe A. Haas is allowed \$666.55 in New York itemized deductions and two exemptions. Petitioners are entitled to reduce their New York State personal income tax by the New York State income tax withheld from the wages of Sheldon S. Haas and Edythe A. Haas in the amount of \$719.26.

F. That the petition of Sheldon S. and Edythe A. Haas is granted to the extent indicated in Conclusion of Law "E" and that, except as so granted, the petition is in all other respects denied. The revised tax due shall be sustained, together with such interest and penalties as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1979

PRESIDENT



COMMISSIONER



COMMISSIONER