

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Daren A. Rathkopf :
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 1972. :

AFFIDAVIT OF MAILING

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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Daren A. Rathkopf, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daren A. Rathkopf
149 Turkey La.
Cold Spring Harbor, NY 11724
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
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 26, 1979

Daren A. Rathkopf
149 Turkey La.
Cold Spring Harbor, NY 11724

Dear Mr. Rathkopf:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DAREN A. RATHKOPF	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1972.	:	

Petitioner, Daren A. Rathkopf, 149 Turkey Lane, Cold Spring Harbor, New York 11724, filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 14512).

On January 3, 1979, petitioner informed the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

Whether the statutory period of limitations on assessment had expired since assessment was not made within the three year period.

FINDINGS OF FACT

1. Petitioner, Daren A. Rathkopf, and his wife, Mira Rathkopf, filed a combined New York State Income Tax Resident Return for 1972 on April 17, 1973.

2. On April 12, 1976, the Income Tax Bureau issued a Statement of Audit Changes on the grounds that unincorporated business taxes imposed by New York State and New York City were not deductible in determining New York taxable income. Petitioner failed to increase Federal adjusted gross income by the amount representing his distributive share of the New York State and New York City unincorporated business tax deduction taken on the partnership return of Rathkopf and Rathkopf.

On April 12, 1976, the Income Tax Bureau issued a Notice of Deficiency asserting additional personal income tax in the amount of \$125.54, plus interest of \$28.17, for a total due of \$153.71.

3. Petitioner contended that the Income Tax Bureau was barred from assessing or collecting the tax that was due for 1972, since it was not assessed against him within the three year period of limitations provided for in section 683(a) of the Tax Law.

CONCLUSIONS OF LAW

A. That the Notice of Deficiency issued against petitioner on April 12, 1976 for 1972 was issued within three years after the New York State Income Tax Resident Return was filed. Section 683(e) of the Tax Law states that "The running of the period of limitations on assessment or collection of tax or other amount shall, after the mailing of a Notice of Deficiency, be suspended for the period during which the Tax Commission is prohibited under subsection (c) of section six hundred eighty-one from making the assessment or from collecting by levy." The Income Tax Bureau is not barred from assessing tax when a Notice of Deficiency is issued within three years after a return is filed.

B. That the petition of Daren A. Rathkopf is denied and the Notice of Deficiency issued April 12, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER