

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
George O'Keefe (deceased) :  
and Anne O'Keefe : 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 6th day of June, 1980, he served the within notice of Decision by certified mail upon George O'Keefe (deceased), and Anne O'Keefe, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George O'Keefe (deceased)  
and Anne O'Keefe  
686 Hempstead Ave.  
W. Hempstead, NY 11552

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  
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
George O'Keefe (deceased) :  
and Anne O'Keefe : 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 6th day of June, 1980, he served the within notice of Decision by certified mail upon Milton P. Weiss the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Milton P. Weiss  
686 Hempstead Ave.  
West Hempstead, NY 11552

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  
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

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

June 6, 1980

George O'Keefe (deceased)  
and Anne O'Keefe  
686 Hempstead Ave.  
W. Hempstead, NY 11552

Dear Mrs. O'Keefe:

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  
Milton P. Weiss  
686 Hempstead Ave.  
West Hempstead, NY 11552  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions

of

GEORGE O'KEEFE (Deceased) and ANNE O'KEEFE  
ESTATE OF GEORGE O'KEEFE, ANNE O'KEEFE, EXECUTRIX : DECISION

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 Year 1971.

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Petitioners, George O'Keefe (deceased) and Anne O'Keefe, c/o Milton P. Weiss, 686 Hempstead Avenue, West Hempstead, New York 11552, filed petitions for redeterminations of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1971 (File Nos. 13337 and 13338).

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 March 8, 1979, at 10:45 A.M. Petitioners appeared by Milton P. Weiss, CPA. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

#### ISSUES

I. Whether the New York taxable income of petitioners, George O'Keefe (deceased) and Anne O'Keefe, was correctly determined for personal income tax purposes for 1971.

II. Whether the taxable business income of petitioner George O'Keefe (deceased) was correctly determined for unincorporated business tax purposes for 1971.

#### FINDINGS OF FACT

1. Petitioners, George O'Keefe (deceased) and Anne O'Keefe, timely filed

a New York State personal income tax return for 1971. On this return petitioners reported business income from a gas station of \$6,486.90. Petitioner George O'Keefe did not file a New York State Unincorporated Business Tax Return for said year.

2. On November 25, 1974, as the result of a field audit, a Statement of Audit Changes was issued against petitioners, George O'Keefe and Anne O'Keefe, for additional personal income tax for the year 1971. The Audit Division issued a Notice of Deficiency on November 25, 1974 for additional personal income tax of \$137.57, plus interest of \$21.55, for a total due of \$159.12.

3. On November 25, 1974, a Statement of Audit Changes was issued against petitioner George O'Keefe for unincorporated business tax due for the year 1971. The Audit Division issued a Notice of Deficiency on November 25, 1974 imposing unincorporated business tax of \$190.44, plus interest of \$29.83, for a total due of \$220.27.

4. A field examination of petitioner's business books and records produced no understatement of income or overstatement of expenses. The liabilities for personal income tax and unincorporated business tax shown to be due on the statements of audit changes and notices of deficiency dated November 25, 1974 were determined on an estimated understatement of income which was based on an analysis of the cost of living expenses for a family which consisted of husband and wife and four children. The children's ages in 1971 were 17, 14, 13 and 7. This estimated analysis showed the cost of living requirements for six people to be \$9,400.00 less the amount drawn from the business of \$5,200.00, which created additional cost of living requirements of \$4,200.00. This resulted in additional personal taxable income of \$3,654.00 and additional unincorporated business taxable income of \$3,549.52.

5. The Audit Division contended that the normal cost of supporting a family the size of the petitioner's and the available evidence of owning a boat, membership in a yacht club, payments for music lessons, purchase of a television and borrowing money from petitioner's bank on his signature, was sufficient to support an inference that the petitioner's cost of living expenses were in excess of the estimate submitted by petitioners.

6. The estimated cost of living analysis was computed by the Audit Division in the following manner:

Food for 6 people (\$100.00) per week	\$5,200.00
Clothing for 6 people	1,200.00
Automobile use	1,000.00
Insurance, medical, entertainment, etc.	<u>2,000.00</u>
Cost of living requirements for 6 people	9,400.00
Available cash drawings from business	<u>5,200.00</u>
Additional cost of living requirements	<u>\$4,200.00</u>

No evidence was adduced at the hearing to document or explain how the above amounts were determined.

7. Petitioners contended that the estimated analysis of cost of living expenses in the amount of \$9,400.00 was overstated. Petitioners submitted a sworn affidavit as to their expenses for food, clothing, automobile (1954 Pontiac), insurance, medical and entertainment and that the total expenses, as computed by petitioners, did not exceed the \$5,200.00 drawn from the business. It was further argued that the expense for membership in the yacht club was \$93.65, that payment for musical lessons totaled \$177.50 and that the television was purchased for \$182.00.

#### CONCLUSIONS OF LAW

A. That field audit substantiated the amounts contained in petitioners' business books and records as correct since there was no finding of additional income. That there is insufficient evidence to support any reasonable inference that petitioners' cost of living expenses exceeded available cash drawings

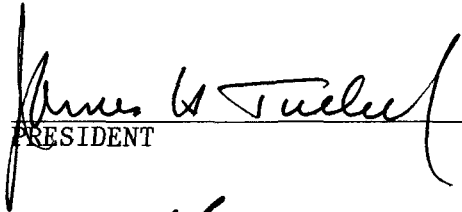
from the business. That the analysis of cost of living expenses as estimated by the Audit Division is without foundation and is arbitrary and capricious.

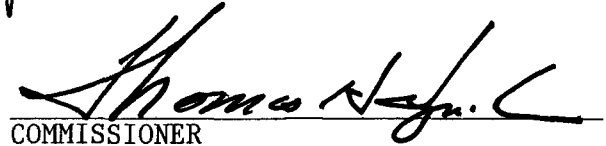
B. That the petitions of George O'Keefe (deceased) and Anne O'Keefe are granted and the notices of deficiency issued November 25, 1974 are cancelled.

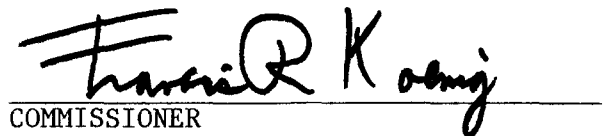
DATED: Albany, New York

STATE TAX COMMISSION

JUN 6 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER