

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

JAMES T. HALL AND JUDITH HALL

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax and Unincorporated :  
Business Tax under Articles 22 and 23 of the Tax  
Law for the Years 1978 and 1979.

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Petitioners, James T. Hall and Judith Hall, P.O. Box 2097, Sarasota,  
Florida 33578, filed a petition for redetermination of a deficiency or for  
refund of personal income tax and unincorporated business tax under Articles 22  
and 23 of the Tax Law for the years 1978 and 1979 (File No. 37851).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of  
the State Tax Commission, 259 Monroe Avenue, Rochester, New York, on March 13,  
1985 at 9:15 A.M., with all briefs to be submitted on or before June 21, 1985.  
Petitioners appeared by Mr. Bernard Block. The Audit Division appeared by  
John P. Dugan, **Esq.** (James Della Porta, **Esq.**, of counsel).

#### ISSUE

I. Whether the Notice of Deficiency was issued beyond the statute of  
limitations.

II. Whether the Audit Division's reconstruction of petitioners' income for  
the years 1977 and 1978, using the net worth method, properly determined that  
petitioners had additional unreported income.

#### FINDINGS OF FACT

1. Petitioners, James T. Hall and Judith Hall, filed New York State  
income tax resident returns for the years 1978 and 1979. In 1978, the petitioners

New York State unincorporated business tax returns for the years 1978 and 1979. Both the income tax return and the unincorporated business tax return filed for each of the years in question reported the income earned and expenses incurred by James T. Hall from his operation of an unincorporated business known as Naples Hotel. Naples Hotel was a restaurant which sold food and beverages. Petitioner reported a net profit from this business of \$3,336.84 in 1978 and a net loss of \$25,882.86 in 1979.

2. On June 23, 1981, the Audit Division commenced an audit of petitioners. The decision to conduct an audit was based, in part, on the Audit Division's conclusion that there were certain discrepancies revealed by petitioners' tax returns. That is, the tax returns reported a substantial increase in business assets without an apparent source of sufficient income to make the purchases.

3. As a result of conducting a net worth audit, the Audit Division concluded that petitioners had unreported income in the amount of \$34,462.02 in 1978 and \$70,058.75 in 1979. Consequently, the Audit Division issued a Notice of Deficiency to petitioners asserting personal income tax due for the years 1978 and 1979 of \$15,812.90, plus penalty pursuant to Tax Law §685(b) of \$790.66 and interest of \$3,925.37, for a total amount due of \$20,528.93.

4. The Notice of Deficiency had two dates printed on it -- April 14, 1982 and April 27, 1982. However, the mailing records of the Department of Taxation and Finance show that the Notice of Deficiency was mailed on April 14, 1982.

5. After the Notice of Deficiency was issued, the Audit Division received additional information pertaining to the cost basis of rental property located at 1098 Mount Hope Avenue in Rochester, New York, which was sold during the audit period. Petitioners also established that they had a series of loans

that had not been reflected in the original audit. The Audit Division also adjusted the amount of the proceeds which petitioners received on the sale of vacant land. On the basis of this information, the Audit Division reduced the amount of tax asserted to be due to \$13,830.63 plus penalty and interest.

6. The net worth audit was based upon an series of computations. The following represents a synopsis **of** those computations to which petitioners take exception in their post-hearing brief:

a) Analysis of assets and liabilities as of December 31, 1977.

1) Petitioners assert that there is a \$9,000.00 error arising from the duplication **of** the value of certain land. However, the land has not been identified. The Audit Division has acknowledged that it had duplicated the value of property located on Mount Hope Avenue in Rochester, New York, but that the duplication of the entry recording the sale of the property has been corrected.

2) Petitioners' brief asserts that there **is** an error of \$31,800.00 without setting forth the nature of the error. However, it may be inferred that petitioners are arguing that the Audit Division incorrectly concluded that petitioners had a loan in the amount of \$31,800.00 from Security Trust Company in 1977. The documentation in the record supports the conclusion that petitioners had such a loan. In addition, petitioners have not submitted any documentation **to** refute this premise.

3) Petitioners maintain that there is a \$36,870.62 misconception pertaining to mortgages payable on rental properties apparently on the basis that such a mortgage was nonexistent. In the course of the audit, the Audit Division determined that petitioners owned property at 1098

Mount Hope Avenue in Rochester, New York 14601

mortgage in the amount of \$36,870.62 as of December 31, 1977. The Audit Division's information as to petitioners' real property was derived from petitioners' tax returns and information in the county courthouse records. In contrast, petitioners have not presented any evidence that the property located on Mount Hope Avenue in Rochester was held free of any mortgage debt.

4) Petitioners have maintained that there is a \$20,000.00 error with respect to a loan from Security Trust Company. After revision of the audit, the Audit Division determined that petitioners had loans from Security Trust Company as follows:

<u>Period Ending</u>	<u>Outstandinn Balance of Loan</u>
12/31/77	\$ 75,491.25
12/31/78	84,669.29
12/31/79	141,428.11

The Audit Division obtained this information from Security Trust Company. Petitioners have neither presented any information as to the nature of the asserted error, nor have they shown why the Audit Division's figures are incorrect.

b) Analysis of assets and liabilities as of December 31, 1978.

1) Petitioners have raised the same points addressed in Findings of Fact "6(a)(1)" and "6(a)(2)" with respect to the year 1978. Since the same facts apply herein, further discussion is unnecessary.

2) The Audit Division determined petitioners' personal living expenses by adding an estimated cash living expense of \$7,800.00 to the actual personal checks written by petitioners. In 1978, these checks totalled \$22,529.77. Petitioners maintain that these checks were not used

Mastercard. However, petitioners have not presented any evidence as to how these cash advances were utilized. In addition, petitioners did not present any evidence as to their living expenses.

3) "\$19,108.52 misconception." The Audit Division has accepted the adjustment sought by petitioners on this point and included it in the adjustment discussed in Finding of Fact "5". Therefore, further discussion is unwarranted.

4) Petitioners have alleged that the Audit Division erred by not increasing petitioners' liabilities as a result of certain loans. Two of these loans were allegedly from Security Trust Company in the amounts of \$16,348.75 and \$10,000.00. These funds were allegedly used to convert hotel rooms into apartments, to purchase silver bullion and for business renovations.

5) The Audit Division declined to take into account proceeds which petitioners received from the sale of property designated as "1098 Mount Hope Avenue." Petitioners have maintained, without any substantiation, that the proceeds from the sale were used as a downpayment on a dwelling.

c) Analysis of assets and liabilities as of December 31, 1979.

1) Petitioners have alleged that it was an error not to include liabilities of \$57,775.00 arising from cash advances from Mastercard and Visa. Petitioners maintain, without any substantiation, that these funds were utilized to purchase mining shares and to cover margin accounts.

2) Petitioners apparently contend that the Audit Division erred in understating their liability by \$100,000.00 based upon a note from Security Trust Company. No evidence was presented to document the

existence of said note. Further, no evidence was presented disclosing the use of the funds.

3) The Audit Division determined petitioners' personal living expenses by adding an estimated cash living expense of \$7,800.00 to the actual personal checks written by petitioners. In 1979, these checks totalled \$30,003.05. Petitioners have argued that the personal checks were not used to satisfy personal living expenses as determined by the Audit Division, but were used to pay back cash advances. Petitioners have not presented any evidence as to how these cash advances were utilized. Moreover, they have not presented any evidence as to petitioners' living expenses.

4) Petitioners have argued that the Audit Division erred in failing to take into account untraced loan proceeds and other items as follows: a \$73,160.00 loan used to purchase mining stocks, commodity contracts, silver and to make a downpayment on a dwelling; \$9,255.80 proceeds from the sale of commodity trading contracts used to purchase mining shares; and proceeds of \$21,966.82 used to purchase mining shares.

5) Petitioners have argued that there **is** a \$10,000.00 error arising from the sale of vacant land. The Audit Division has acknowledged that there was an error and has made the corresponding adjustments. Therefore, this point is now moot.

7. Miscellaneous adjustments - Petitioners assert that there are **a** number of arithmetic errors with respect to each of the tax years at issue. However, petitioners have not identified whether the errors appeared on the tax returns or in the Audit Division computations.

8. No evidence or argument was addressed to the negligence penalty asserted to be due.

#### CONCLUSIONS OF LAW

A. That section 683(a) of the Tax Law provides that, generally, tax shall be assessed within three years after the return was filed regardless of whether the return was filed on or after the date prescribed. Section 683(b)(1) provides, in general, that an income tax return filed before the last date prescribed shall be deemed filed on such last day. In accordance with Finding of Fact "4", the Notice of Deficiency was mailed within three years of the date the returns for 1978 and 1979 were due. Accordingly, the Notice of Deficiency, which was mailed on April 14, 1982, was issued within the statute of limitations.

B. That section 722 and 689(e) of the Tax Law place the burden of proof on petitioner except in three specifically enumerated instances, none of which is relevant to this case. Petitioners have failed to meet their burden of proof with respect to each and every issue raised. Neither the summary schedules nor the sparse documentation submitted into evidence were sufficient to form any basis warranting cancellation or reduction of the instant deficiency.

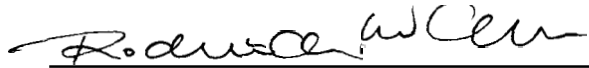
C. That the Audit Division properly declined to take into account the loans where petitioners did not identify how the loans were used. The rationale for this position can be seen from those instances where petitioners claimed that the loans were utilized to purchase assets. In these instances, there would be no change in the asserted deficiency because both the assets and liabilities would be increased equally resulting in no change in petitioners' net worth.

D. That the petition of James T. Hall and Judith Hall is denied and the Notice of Deficiency is sustained.

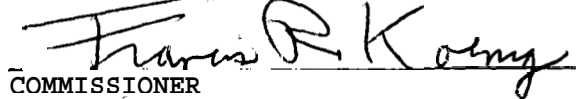
DATED: Albany, New York

MAR 06 1986

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER