

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition

of

MARTIN PATELSKY

DETERMINATION

for Redetermination of a Deficiency or for  
Refund of New York State and City of New York :  
Personal Income Taxes under Article 22 of the  
Tax Law and Chapter 46, Title T of the  
Administrative Code of the City of New York  
for the Years 1976 through 1981.

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Petitioner, Martin Patelsky, 737 East 85th Street, Brooklyn, New York 11236, filed a petition for redetermination of a deficiency or for refund of New York State and City of New York personal income taxes under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1976 through 1981 (File No. 68150).

A hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 28, 1987 at 9:15 A.M. Petitioner appeared by Robert W. Tauber, Esq. The Audit Division appeared by John P. Dugan, Esq. (Kevin A. Cahill, Esq., of counsel).

#### ISSUES

I. Whether three notices of deficiency, dated April 8, 1983, were mailed by the Audit Division to petitioner's last known address as required by sections 681(a) and 691(b) of the Tax Law, thereby giving him proper notice that there were income tax deficiencies for the years 1976 through 1981.

11. Whether petitioner, if given proper notice of income tax deficiencies for the years 1976 through 1981, timely filed a petition for redetermination of said deficiencies.

FINDINGS OF FACT

1. On January 11, 1983, the Audit Division issued to Martin Patelsky (hereinafter "petitioner") a Statement of Personal Income Tax Audit Changes which advised petitioner that, pursuant to an audit, additional New York State and City of New York personal income taxes were due as follows:

<u>Year</u>	<u>Additional Tax Due</u>
1976	\$ 1,193.80
1977	3,622.61
1978	22,220.78
1979	21,080.88
1980	9,821.62
1981	7,807.29
	<u>\$65,746.98</u> Total

In addition to the above amounts of tax, the Statement of Personal Income Tax Audit Changes also advised petitioner that the Audit Division was asserting penalty pursuant to section 685(e) of the Tax Law and interest for each of the years at issue. The Statement of Personal Income Tax Audit Changes was mailed to petitioner at 737 East 85th Street, Brooklyn, New York 11236.

2. On April 8, 1983, the Audit Division issued to petitioner three notices of deficiency as follows:

<u>Years</u>	<u>Tax Due</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
1976, 1977	\$ 4,816.41	\$ 2,408.21	\$ 2,521.18	\$ 9,745.80
1978, 1979	43,301.66	21,650.83	16,272.26	81,224.75
1980, 1981	17,628.91	8,814.46	3,413.27	29,856.64

The notices of deficiency were sent by certified mail to petitioner at 306 East Mosholu Parkway, Bronx, New York 10458. Petitioner never received these notices.

3. On January 15, 1982, petitioner executed a consent fixing the period of limitation upon assessment of personal income tax, agreeing that personal income taxes for the year 1978 could be assessed at any time on or before April 15, 1983. On June 15, 1982, a similar consent was executed by petitioner whereby he agreed that personal income taxes for the year 1976 could be assessed at any time on or before April 15, 1983.

4. The Audit Division commenced an income tax field audit of petitioner in October of 1981. The original auditor was Diana Deutch who remained on the case until June of 1982 when, because she took a leave of absence, the case was transferred to Sal Mastriacovo. On December 16, 1982, Mr. Mastriacovo mailed additional consents fixing the period of limitation upon assessment of personal income tax to petitioner at 306 East Mosholu Parkway, Bronx, New York 10458. On December 20, 1982, these documents were returned by the Post Office as being undeliverable. As a result thereof, Mr. Mastriacovo contacted Assistant Attorney General Saslow on January 4, 1983 in an attempt to obtain petitioner's current address. He also spoke with petitioner, by telephone, on January 7, 1983. From either Mr. Saslow or from petitioner, Mr. Mastriacovo obtained a new address for petitioner, i.e., 737 East 85th Street, Brooklyn, New York 11236. Mr. Mastriacovo thereupon noted this new address in the Tax Field Audit Record. Shortly thereafter, on January 11, 1983, a Statement of Personal Income Tax Audit Changes was issued to petitioner by mailing the same to his Brooklyn address as indicated in Finding of Fact "1", supra. On November 1, 1983, the original auditor, Diana Deutch, was reassigned the case by the Audit Evaluation Bureau.

5. On January 3, 1983, petitioner entered a plea of guilty to the crime of scheming to defraud in the first degree in satisfaction of an indictment

pending against him in the Supreme Court, County of New York. As a result of said plea, petitioner was sentenced, on February 24, 1983, to a definite term of imprisonment of nine months in the New York City Correctional Institution for Men at Rikers Island. Petitioner was actually incarcerated from February 24, 1983 to August 24, 1983.

6. Petitioner filed no New York State or City of New York personal income tax returns for the year 1981. The last return he filed was for the year 1980. The 1980 return bore a date of April 12, 1982 and was received on June 15, 1982. Petitioner listed his address on this return as 306 East Mosholu Parkway, Bronx, New York 10468.

7. From 1977 through approximately August of 1982, petitioner resided at 306 East Mosholu Parkway, Bronx, New York. Thereafter, petitioner moved to the residence of his parents at 737 East 85th Street, Brooklyn, New York. Petitioner left no forwarding address with the Bronx Post Office or with the owners of the property at Mosholu Parkway when he moved to Brooklyn.

8. At the time of the issuance of the notices of deficiency by the Audit Division on April 8, 1983, petitioner was incarcerated.

9. In October or November of 1985, petitioner received a Tax Amnesty Application from the Department of Taxation and Finance which advised him that he was liable for assessments of income tax for the years at issue and further advised him of the existence of and procedure for this tax amnesty program. On November 15, 1985, petitioner executed and mailed a petition to the Tax Appeals Bureau relative to the aforesaid assessments which was received on November 19, 1985.

CONCLUSIONS OF LAW

A. That section 681(a) of the Tax Law and section T46-181.0(a) of the Administrative Code of the City of New York, in effect for the years at issue, provided that a Notice of Deficiency shall be mailed by certified or registered mail to the taxpayer at his or her last known address in or out of this State.

B. That section 691(b) of the Tax Law and section T46-191.0(b) of the Administrative Code of the City of New York, in effect for the years at issue, provided that, for purposes of Article 22 of the Tax Law and Chapter 46, Title T of the Code, a taxpayer's last known address shall be the address given in the last return filed by the taxpayer "unless subsequently to the filing of such return the taxpayer shall have notified the tax commission of a change of address."

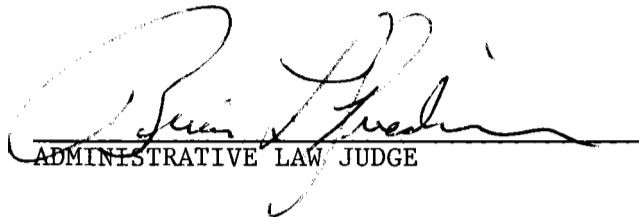
C. That it is clear from the notations contained in the Tax Field Audit Record made by Mr. Mastriacovo, taken together with the fact that the Audit Division mailed the Statement of Personal Income Tax Audit Changes to petitioner at his 737 East 85th Street, Brooklyn, New York address, both events occurring approximately three months prior to the issuance of the notices of deficiency, that the Audit Division had been notified of a change in petitioner's address. Mailing by the Audit Division of the notices of deficiency by certified mail to petitioner at his former address, 306 East Mosholu Parkway, Bronx, New York, was not in compliance with the provisions of section 681(a) of the Tax Law and section T46-181.0(a) of the Administrative Code of the City of New York and, as such, renders the issuance of said notices a nullity.

D. That by virtue of Conclusion of Law "C", Issue II is hereby rendered moot.

E. That the petition of Martin Patelsky is granted and the notices of deficiency issued April 8, 1983 are hereby cancelled.

DATED: Albany, New York

SEP 03 1987

  
ADMINISTRATIVE LAW JUDGE