

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS AND MARY FARRANTO

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1961

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Lynn Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of July, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon THOMAS AND MARY FARRANTO (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Thomas and Mary Farranto
2361 82nd Street
Brooklyn, New York 11214

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

27th day of July, 1972.

Donald R. Turner

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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THOMAS AND MARY FARRANTO

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a Refund of Personal Income
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Tax Law for the (Year(s) 1961

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State of New York
County of Albany

Lynn Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of July, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon AUERBACK & BUCK

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Auerback & Buck
310 Madison Avenue
New York, New York 10017

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

27th day of July, 1972.

Martha Funaro

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

STATE TAX COMMISSION
NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227
AREA CODE 518
457-2655, 6, 7

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
July 27, 1972

Thomas and Mary Farranto
2361 82nd Street
Brooklyn, New York 11214

Dear Sir and Madam:

DECISION

Please take notice of the _____ of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s) _____
of the Tax Law any proceeding
in court ~~4 months~~ an adverse decision must be commenced
within _____ after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Wigal G. Wright
Wigal G. Wright

Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
THOMAS AND MARY FARRANTO : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1961. :

Thomas and Mary Farranto filed a petition for a redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the year 1961. In lieu of a hearing the petitioner agreed to submit the controversy solely on the file of the Income Tax Bureau. Such file has been duly examined and considered.

ISSUES

The issues in this case relate to (A) the inclusion in income of amounts received under a claim of right and (B) a penalty for negligence.

FINDINGS OF FACT

1. Petitioner, Thomas Farranto, is a laborer employed by a family construction firm. Petitioners declared no income for 1961 for New York purposes. They had reported adjusted gross income of \$4,180.00 to the Federal authorities.

2. In 1962, petitioner, Thomas Farranto was indicted for receiving stolen goods in 1961, namely two U.S. Government bonds on which he had forged the owner's signature and sold for \$20,388.25. He pleaded guilty.

3. In 1963, Thomas Farranto made restitution of the \$20,388.25.

4. In 1965, the Federal authorities determined that petitioners had income for 1961 in the amount of \$20,388.25 from a "fraudulent scheme or device". They also determined that petitioners suffered

a capital loss in the amount of \$622.01 and found a resulting adjusted gross income of \$23,946.24 and after a standard deduction and six personal exemptions, a taxable income of \$19,346.24. The additional assessment which resulted therefrom, \$5,057.72, was credited on petitioner's 1963 Federal income tax pursuant to section 1341(b) (1) of the Internal Revenue Code.

5. The Federal authorities originally asserted a penalty for fraud. However, at the instance of the taxpayer this was reduced to a penalty for negligence.

6. The Notice of Deficiency in issue is dated May 25, 1970. The deficiency is in the amount of \$1,269.62 with a 5% penalty amounting to \$63.48 under section 685(b) of the Tax Law, and interest of \$617.85 for a total of \$1,950.95.

CONCLUSIONS OF LAW

A. The income in dispute is correctly includible in Federal adjusted gross income by reason of having been received under a claim of right. Under section 612(a) of the Tax Law, it is, therefore, also includible in New York adjusted gross income. Neither the Federal nor the New York tax laws provide for the exclusion of such amounts merely because of events in a following year. (See Petition of Kass, S.T.C. 3-15-71, C.C.H. N.Y. State Tax Rep. §99-371.) The Federal authorities made an adjustment for 1963, a year which is not here in issue. In any event, such an adjustment could not be made under the New York statute. (See also Petition of Churchill, S.T.C. 12-31-70, C.C.H. N Y State Tax Rep. §99-308.)

B. The negligence penalty is proper.

DECISION

The petition is denied and the deficiency is affirmed together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York

July 27, 1972.

STATE TAX COMMISSION

Norman Gallivan

COMMISSIONER

Bruce Mawley

COMMISSIONER

Milton Kren

COMMISSIONER