

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ELEANOR H. MELUCCI

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

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) 1962

State of New York
County of Albany

Janet Mack , 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 19th day of July , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Eleanor H.

Melucci (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mrs. Eleanor H. Melucci
6 University Street
West Albany, New York 12205

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)~~
~~the~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

19th day of July , 1974

Janet Mack

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York

July 19, 1974

Mrs. Eleanor H. Melucci
6 University Street
West Albany, New York 12205

Dear Mrs. Melucci:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **690 and 722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ELEANOR H. MELUCCI	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income	:	
and Unincorporated Business Taxes	:	
under Articles 22 and 23 of the Tax	:	
Law for the Year 1962.	:	

Petitioner, Eleanor H. Melucci, petitioned for a redetermination of deficiencies in personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1962.

A formal hearing was held at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on April 24, 1970, at 9:00 A.M., before Lawrence A. Newman, Hearing Officer. The taxpayer appeared pro se, and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Albert J. Rossi, Esq., of counsel).

ISSUE

Was petitioner, Eleanor H. Melucci, jointly and individually liable for income unreported by her husband at time of filing?

FINDINGS OF FACT

1. Petitioner, Eleanor H. Melucci, timely filed a joint New York State income tax return with her husband, James F. Melucci, for the year 1962. James F. Melucci timely filed a separate individual Federal return for said year.

2. A Notice of Determination of deficiencies in personal income and unincorporated business taxes for the year 1962 was issued on February 19, 1968, against the taxpayer under File No. 1489733.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. On August 15, 1967, the Income Tax Bureau issued a Statement of Audit Changes against James F. Melucci and his wife, petitioner, Eleanor H. Melucci, assessing personal income and unincorporated business taxes on unreported income from wagering, disclosed by a Federal audit of James F. Melucci's separate Federal return. The aforesaid Statement of Audit Changes also assessed a penalty for fraud pursuant to section 685(e) of the Tax Law. James F. Melucci did not file a petition for a hearing on his tax liability.

5. On February 26, 1968, petitioner filed an amended separate New York State return for the year 1962, pursuant to section 651(b)(1) of the Tax Law, on the grounds that she and her husband had filed separate Federal returns for the year in question and therefore were not jointly liable for the deficiency.

6. There was no showing by petitioner that she had filed a separate Federal return for 1962 or that she had received a refund due her based on Federal withholding for said year.

7. There was no evidence that petitioner and her husband ever filed a joint Federal return for 1962.

8. On his separate Federal return for 1962, James F. Melucci claimed and was allowed only one exemption for \$600.00.

9. Petitioner and her husband received, endorsed and cashed jointly a tax refund check from New York State for the year 1962.

10. The petitioner did not know of, and had no reason to know of the omission of the wagering income. She did not benefit significantly from the amounts omitted from the return. She was not at all involved in the carrying on of the business of wagering.

11. The unreported income was in excess of 25 percent of the amount of New York adjusted gross income stated in the return.

OPINION

Section 651(b)(1) of the Tax Law provides that if the Federal income tax liability of husband or wife is determined on a separate Federal return, their New York income tax liabilities and returns shall be separate. In the case considered here, the initial disclosure of an omission from gross income was made by a Federal audit, based solely on the separate return of James F. Melucci. As the Federal tax liability for this omission rested with petitioner's husband only, a correct reading of section 651(6)(1) would relieve petitioner of any state liability. Thus, petitioner's error was in filing a joint state return with her husband after he had filed a separate Federal return.

Petitioner would be relieved of liability even had the joint state filing been proper, under the New York State "innocent spouse provision" (see section 651(b)(5) of the Tax Law). This provision applies to all years and periods to which Article 22

of the Tax Law applies and relieves a spouse who has signed a joint return of tax liability (including interest and penalties), (a) if the amount omitted from New York adjusted gross income is attributable to one spouse and is in excess of 25 percent of the amount of New York adjusted gross income stated in the return, (b) if the other spouse establishes that in signing the return he or she did not know of, and had no reason to know of, such omission and (c) if, taking into account whether or not the other spouse significantly benefited directly or indirectly from the items omitted and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency arising from the omission.

Alternatively, it appears that petitioner and her husband did file separate Federal returns; she therefore could not properly be assessed with liability based on incorrectly filed joint New York State returns.

Petitioner is either an "innocent spouse" or a separate taxpayer. In either event, she is not liable for taxes on her husband's omitted income.

CONCLUSIONS OF LAW


A. That petitioner, Eleanor H. Melucci, is not liable for the personal income and unincorporated business tax due on income unreported by her husband, James F. Melucci, for the year 1962.

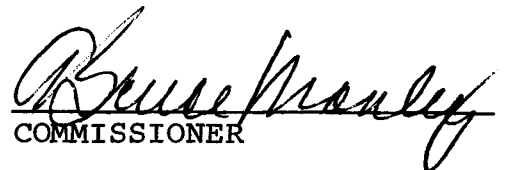
B. That, no part of the deficiency as is due to fraud, the penalty assessed in the Statement of Audit Changes is cancelled pursuant to section 685(e) of the Tax Law.

C. That the petition of Eleanor H. Melucci is sustained and the Notice of Deficiency issued on February 19, 1968, is cancelled.

DATED: Albany, New York
July 19, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER