

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL F. SPIOTTA and VIRGINIA SPIOTTA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of ~~Personal Income and~~ :
~~Unincorporated Business~~ :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~xxx Period(s)~~ :
1969, 1970 and 1971.

State of New York
County of Albany

Catherine Steele

, 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 13th day of September , 1976 , she served the within

Notice of Decision by (certified) mail upon Michael F. Spiotta and

Virginia Spiotta (~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

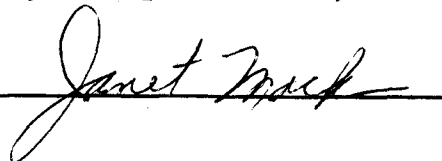
as follows: Mr. & Mrs. Michael F. Spiotta
129 Trumbull Parkway
Batavia, New York 14020

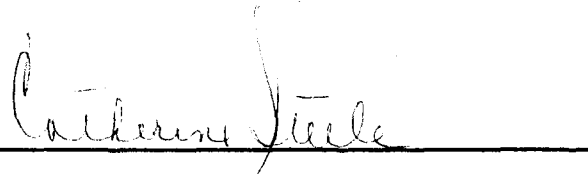
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13th day of September , 1976.





STATE OF NEW YORK
STATE TAX COMMISSION

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of

MICHAEL F. SPIOTTA and VIRGINIA SPIOTTA

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Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~xxx~~ ~~xxxx~~ :
1969, 1970 and 1971.

State of New York
County of Albany

Catherine Steele, 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 13th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Robert M. Tyle, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert M. Tyle, Esq.
1008 Times Square Building
45 Exchange Street
Rochester, New York 14614
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

13th day of September, 1976

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 13, 1976

TELEPHONE: (518) **457-3850**

Mr. & Mrs. Michael F. Spiotta
129 Trumbull Parkway
Batavia, New York 14020

Dear Mr. & Mrs. Spiotta:

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

Please take further notice that pursuant to
Section(s) **690 & 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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL F. SPIOTTA AND VIRGINIA SPIOTTA

For Redetermination of a Deficiency or for
Refund of Personal Income and Unincorporated
Business Taxes under Article 22 and 23 of
the Tax Law for the Years 1969, 1970 and
1971

:
:
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: DECISION
:
:

Petitioners, Michael F. Spiotta and Virginia Spiotta, residing at 129 Trumbull Parkway, Batavia, New York, have filed a petition 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 years 1969, 1970 and 1971.

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, Marine Midland Plaza, Rochester, New York on May 21, 1975. Petitioner appeared by Robert M. Tyle, Esq. The Income Tax Bureau appeared by Peter J. Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner, Michael F. Spiotta, was engaged in the business of bookmaking during the years 1969, 1970 and 1971 and if so how much income did he derive therefrom.

FINDINGS OF FACT

1. Petitioners, Michael F. Spiotta and Virginia Spiotta, filed joint New York State resident income tax returns for the

years 1969, 1970 and 1971. Petitioner, Michael F. Spiotta, filed New York State unincorporated business tax returns for said years.

2. Petitioner, Michael F. Spiotta, operated Mike's Hotel in Batavia, New York from 1946 through 1972. Petitioner's wife, Virginia Spiotta, assisted in the management of the business. On August 31, 1972, the State Police raided petitioner, Michael F. Spiotta's, establishment in search of records evidencing bookmaking operations. He was subsequently convicted of allowing gambling on the premises and disorderly conduct. He was fined \$50.00 for each offense.

3. During the raid at petitioner, Michael F. Spiotta's, hotel the State Police confiscated gambling proceeds, gambling paraphernalia and records indicating petitioner was engaged in the business of bookmaking. Petitioner alleged that he merely transmitted his customer's and employee's horse wagers to a bookmaker for no remuneration. He refused to give the bookmaker's name. Petitioner alleged that he prepared the records found on the premises merely to assuage his curiosity of the unnamed bookmaker's profits.

4. After notice of the raid, the Income Tax Bureau performed an audit of petitioner, Michael F. Spiotta's, records. The only complete records available were for the six month period, July 1971 through December 1971. The six month period produced net earnings of \$3,996.00 from his bookmaking activities. This figure was approximated

to \$4,000.00. Consequently, petitioner's net income from bookmaking was estimated to be \$8,000.00 per annum, for the years 1969, 1970 and 1971.

5. On March 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Michael F. Spiotta and Virginia Spiotta for personal income tax due from the proceeds of petitioner, Michael F. Spiotta's, bookmaking operation. On said date an additional Statement of Audit Changes was issued against petitioner, Michael F. Spiotta, for unincorporated business tax on income derived from the aforementioned activity. In accordance with the statements of audit changes, notices of deficiency were issued against petitioner, Michael F. Spiotta and Virginia Spiotta for personal income tax of \$2,545.32, and against Michael F. Spiotta for unincorporated business tax of \$1,369.70.

CONCLUSIONS OF LAW

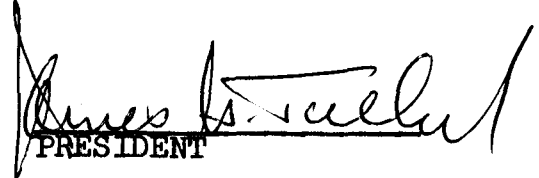
A. That petitioner, Michael F. Spiotta, was involved in the business of bookmaking for the years 1969, 1970 and 1971.

B. That petitioner, Michael F. Spiotta and Virginia Spiotta, failed to submit documentary or other substantial evidence to prove that the Income Tax Bureau's projection of his income from bookmaking, for the years 1969, 1970 and 1971, was inaccurate.

C. That the petition of Michael F. Spiotta and Virginia Spiotta is denied, and the notices of deficiency issued March 26, 1973, are sustained.

DATED: Albany, New York
September 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER