

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JULIAN H. GINGOLD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(a)~~ 22 of the :
Tax Law for the Year ~~(XXXXXX Period(s))~~ :
1969.

State of New York
County of Albany

Marsina Donnini, 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 26 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Julian H. Gingold ~~XXXXXXXXXXXXXXXXXXXX~~ (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Julian H. Gingold
188 East 85th Street
New York, New York 10028
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 ~~XXXXXX~~ ~~XXXXXXXXXXXXXXXXXXXX~~ (representative of) the petitioner herein and that the address set forth on said wrapper is the last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ (representative of) the petitioner.

Sworn to before me this

26th day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JULIAN H. GINGOLD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(8)~~ 22 of the :
Tax Law for the Year ~~(8) or Period(s)~~ :
1969.

State of New York
County of Albany

Marsina Donnini, 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 26 day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Herbert
Granoff, Esq. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Herbert Granoff, Esq.
8 Wilshire Drive
Great Neck, New York 11020

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

26th day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 26, 1977

Mr. Julian H. Gingold
188 East 85th Street
New York, New York 10028

Dear Mr. Gingold:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JULIAN H. GINGOLD
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year 1969.

:
:
:
:
:
:
:

DECISION

Petitioner, Julian H. Gingold, residing at 188 East 85th Street, New York City 10028, has filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1969. (File No. 11839)

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on February 7, 1977 at 2:45 p.m. Petitioner appeared by Herbert Granoff, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of Counsel).

ISSUE

Whether a fraud penalty of 50% pursuant to section 685(e) should be added to the petitioner's tax deficiency or, if not, whether a negligence penalty of 5% pursuant to section 685(b) should be added to that deficiency.

FINDINGS OF FACT

1. The petitioner timely filed "New York State Income Tax Resident Return 1969" in which he reported total New York income in the sum of \$44,370.25 and New York taxable income in the sum of \$15,392.65.

2. (a) On August 22, 1975, the Income Tax Bureau issued a Statement of Audit Changes with respect to the taxable year 1969 addressed to the petitioner in which it stated, in part, that the adjustment of taxable income reported of \$15,392.65 is the sum of \$62,660.49, so that "taxable income corrected" is the sum of \$78,053.14.

(b) On the basis of "taxable income corrected" as aforesaid, said Statement of Audit Changes stated that the "personal income tax due" thereon is the sum of \$9,477.44 and that the "Section 685(e) Penalty" is the sum of \$4,295.72.

(c) In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued to the petitioner on December 22, 1975 in the sum of \$6,933.01 consisting of a deficiency of \$1,996.21 together with penalty of \$4,295.72 and \$641.08 in interest.

3. (a) The petitioner consented to the adjustment to taxable income aforesaid in the said amount of \$62,660.49 and interest but protested the penalty aforesaid of \$4,295.72 and timely filed the petition hereafter described with respect to the said penalty.

(b) The petitioner timely filed the aforesaid petition, namely, a petition for redetermination of deficiency or for refund of personal income taxes for the year 1969 on the ground that "the 685(e) penalty is without justification in fact" and that the "return, though incorrect in some details, was prepared by the taxpayer under great mental and physical stress to meet the filing date, without the aid of a professional as in prior and subsequent years, and without willfully or fraudulently intending to defeat or evade the tax."

4. (a) Both prior and subsequent to the taxable year 1969, the petitioner's Federal and New York State income tax returns were prepared by accountants on behalf of the petitioner.

(b) For the taxable year 1969 only, the petitioner prepared his own Federal and New York State income tax returns for the reason that the certified public accountant who had prepared his income tax returns for the taxable years 1967 and 1968 notified the petitioner that "for a variety of internal problems in the firm, he could not do my return for that particular year."

(c) At or about the time when the petitioner prepared his Federal and New York State income tax returns for the taxable year 1969 he was troubled by other personal and business problems.

5. Said adjustment of taxable income amounting to \$62,660.49 consists of various items of disallowed business expense, contributions, interest and legal fees and, in addition, an "understatement of Total Income on IT-201" amounting to \$36,777.59.

6. The petitioner reported in his "U.S. Individual Income Tax Return 1969" that his total income was the sum of \$97,017.15 and that after deducting "adjustments" of \$52,646.96 his adjusted gross income for the taxable year 1969 was the sum of \$44,370.25.

7. Said "adjustments" of \$52,646.96, erroneously included therein the sum of \$35,477.59, representing the "Total Itemized Deductions" appearing on schedule A attached to said Federal return for the taxable year 1969.

8. The aforesaid sum of \$44,370.25 appearing on line 15c of the petitioner's Federal income tax return for the taxable year 1969 as the petitioner's "Adjusted Gross Income" for said year is the amount transposed by the petitioner to lines "1" and "5" of his New York State Income Tax Return 1969 as "Total Income" and "Total New York Income".

9. The said sum of \$35,477.59 appearing on line 17 of schedule A attached to petitioner's "U.S. Individual Income Tax Return" for the taxable year 1969 as the petitioner's "Total Itemized Deductions" is the amount transposed by the petitioner to line "6a" of his "New York State Income Tax Resident Return 1969" as "Total itemized deductions from Federal Return."

10. By reason of the fact that the aforesaid sum of \$44,370.35, appearing on the petitioner's New York State Income Tax Resident Return 1969 as "Total New York Income," reflects the aforesaid deduction of \$35,477.59 that also appeared on line "6a" of said return as "Total itemized deductions from Federal Return", the amount of \$15,392.65 reported on line "9" of the petitioner's said New York State Tax Resident Return 1969 as "New York

Taxable Income", reflects a duplication of the deduction of said sum of \$35,477.59.

11. Said duplication was not made with the intent to defraud but was a mistake resulting from negligence, namely, a failure to exercise that degree of care which a reasonably prudent person would have exercised under the same circumstances.

12. (a) In addition to including said sum of \$35,477.39 in the aforesaid "adjustment" of \$52,646.96 appearing on the petitioner's Federal income tax return for the taxable year 1969, the petitioner also erroneously included therein the exemption of \$1200.00 for dependents appearing on line 9, subdivision f, of petitioner's said tax return.

(b) The inclusion of said sum of \$1200.00 in said "adjustments" on petitioner's U.S. Individual Income Tax Return for the taxable year 1969, thereby contributing to the statement in said return that his "Adjusted Gross Income" was \$44,370.25, was not made with the intent to defraud, but was a mistake that resulted from a lack of understanding on the petitioner's part as to the proper composition of said return.

13. The Internal Revenue Service did not make a finding of fraud or negligence in connection with the petitioner's U.S. Individual Income Tax Return for the taxable year 1969 and its total amount of audit changes for said year of \$7500.00 was made without the assessment of any penalty for either fraud or negligence.

14. The record does not establish that the items of business expense, contributions, interest and legal fees that were disallowed were set forth by the petitioners negligently or with an intent to defraud.

CONCLUSIONS OF LAW

A. That while there is a substantial discrepancy between actual net income and the taxable income reported by the petitioner for the taxable year 1969 in his "New York State Income Tax Resident Return 1969", the discrepancy was not motivated by an intent to defraud and fraud has not been established.

B. That the duplication of deductions amounting to the sum of \$35,477.59 in the petitioner's "New York State Income Tax Resident Return 1969" as set forth in the Findings of Fact, was not motivated by an intent to defraud but was caused by negligence, namely, the failure to exercise that degree of care that a reasonably prudent person would have exercised under the same circumstances.

C. That the inclusion of the sum of \$1200.00 in "adjustments" of \$52,646.96 on petitioner's U.S. Individual Income Tax Return for the taxable year 1969, although contributing to the statement in said return that his "Adjusted Gross Income" was \$44,370.25, was not made with the intent to defraud, nor was it an act of negligence, but was a mistake that resulted from a lack of understanding on the petitioner's part as to the proper composition of said return.

D. That the record does not establish a finding of either fraud or negligence with respect to the items of business expense, contributions, interest or legal fees that were disallowed by the Income Tax Bureau.

E. That in view of the foregoing Findings of Fact and Conclusions of Law the penalty imposed pursuant to section 685(e) of the Tax Law, based on deficiency due to fraud, is hereby cancelled and the 5% penalty provided to be added to the tax pursuant to section 685(b) based on deficiency due to negligence is imposed.

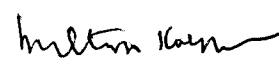
F. That the Income Tax Bureau is directed to modify the Notice of Deficiency dated December 22, 1975, in accordance with this decision and, except to the extent therein expressly granted, the petition is in all other respects denied.

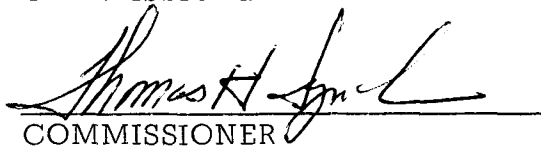
DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 25M **FORMAL HEARING**

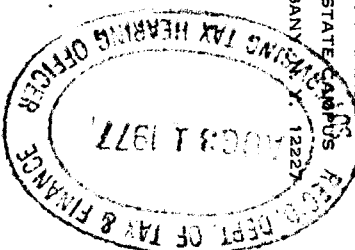
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAPITALS

ALBANY, N.Y. 12227



no check # 692

Mr. Julian H. Gingold
188 East 85th Street
New York, New York 10028

X.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JULIAN H. GINGOLD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(x)~~ 22 of the :
Tax Law for the Year ~~(x) or Period(s)~~ 1969 :

State of New York
County of Albany

John Huhn, 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 1 day of September, 1977, she served the within

Notice of Decision by (certified) mail upon Julian H. Gingold

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

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

as follows: Mr. Julian H. Gingold
185 East 85th Street
New York, NY 10028

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

1st day of September, 1977.

John Huhn

Gust Mack

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JULIAN H. GINGOLD	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year 1969.	:	
	:	

Petitioner, Julian H. Gingold, residing at 188 East 85th Street, New York City 10028, has filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1969. (File No. 11839)

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on February 7, 1977 at 2:45 p.m. Petitioner appeared by Herbert Granoff, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of Counsel).

ISSUE

Whether a fraud penalty of 50% pursuant to section 685(e) should be added to the petitioner's tax deficiency or, if not, whether a negligence penalty of 5% pursuant to section 685(b) should be added to that deficiency.

FINDINGS OF FACT

1. The petitioner timely filed "New York State Income Tax Resident Return 1969" in which he reported total New York income in the sum of \$44,370.25 and New York taxable income in the sum of \$15,392.65.

2. (a) On August 22, 1975, the Income Tax Bureau issued a Statement of Audit Changes with respect to the taxable year 1969 addressed to the petitioner in which it stated, in part, that the adjustment of taxable income reported of \$15,392.65 is the sum of \$62,660.49, so that "taxable income corrected" is the sum of \$78,053.14.

(b) On the basis of "taxable income corrected" as aforesaid, said Statement of Audit Changes stated that the "personal income tax due" thereon is the sum of \$9,477.44 and that the "Section 685(e) Penalty" is the sum of \$4,295.72.

(c) In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued to the petitioner on December 22, 1975 in the sum of \$6,933.01 consisting of a deficiency of \$1,996.21 together with penalty of \$4,295.72 and \$641.08 in interest.

3. (a) The petitioner consented to the adjustment to taxable income aforesaid in the said amount of \$62,660.49 and interest but protested the penalty aforesaid of \$4,295.72 and timely filed the petition hereafter described with respect to the said penalty.

(b) The petitioner timely filed the aforesaid petition, namely, a petition for redetermination of deficiency or for refund of personal income taxes for the year 1969 on the ground that "the 685(e) penalty is without justification in fact" and that the "return, though incorrect in some details, was prepared by the taxpayer under great mental and physical stress to meet the filing date, without the aid of a professional as in prior and subsequent years, and without willfully or fraudulently intending to defeat or evade the tax."

4. (a) Both prior and subsequent to the taxable year 1969, the petitioner's Federal and New York State income tax returns were prepared by accountants on behalf of the petitioner.

(b) For the taxable year 1969 only, the petitioner prepared his own Federal and New York State income tax returns for the reason that the certified public accountant who had prepared his income tax returns for the taxable years 1967 and 1968 notified the petitioner that "for a variety of internal problems in the firm, he could not do my return for that particular year."

(c) At or about the time when the petitioner prepared his Federal and New York State income tax returns for the taxable year 1969 he was troubled by other personal and business problems.

5. Said adjustment of taxable income amounting to \$62,660.49 consists of various items of disallowed business expense, contributions, interest and legal fees and, in addition, an "understatement of Total Income on IT-201" amounting to \$36,777.59.

6. The petitioner reported in his "U.S. Individual Income Tax Return 1969" that his total income was the sum of \$97,017.15 and that after deducting "adjustments" of \$52,646.96 his adjusted gross income for the taxable year 1969 was the sum of \$44,370.25.

7. Said "adjustments" of \$52,646.96, erroneously included therein the sum of \$35,477.59, representing the "Total Itemized Deductions" appearing on schedule A attached to said Federal return for the taxable year 1969.

8. The aforesaid sum of \$44,370.25 appearing on line 15c of the petitioner's Federal income tax return for the taxable year 1969 as the petitioner's "Adjusted Gross Income" for said year is the amount transposed by the petitioner to lines "1" and "5" of his New York State Income Tax Return 1969 as "Total Income" and "Total New York Income".

9. The said sum of \$35,477.59 appearing on line 17 of schedule A attached to petitioner's "U.S. Individual Income Tax Return" for the taxable year 1969 as the petitioner's "Total Itemized Deductions" is the amount transposed by the petitioner to line "6a" of his "New York State Income Tax Resident Return 1969" as "Total itemized deductions from Federal Return."

10. By reason of the fact that the aforesaid sum of \$44,370.35, appearing on the petitioner's New York State Income Tax Resident Return 1969 as "Total New York Income," reflects the aforesaid deduction of \$35,477.59 that also appeared on line "6a" of said return as "Total itemized deductions from Federal Return", the amount of \$15,392.65 reported on line "9" of the petitioner's said New York State Tax Resident Return 1969 as "New York

Taxable Income", reflects a duplication of the deduction of said sum of \$35,477.59.

11. Said duplication was not made with the intent to defraud but was a mistake resulting from negligence, namely, a failure to exercise that degree of care which a reasonably prudent person would have exercised under the same circumstances.

12. (a) In addition to including said sum of \$35,477.39 in the aforesaid "adjustment" of \$52,646.96 appearing on the petitioner's Federal income tax return for the taxable year 1969, the petitioner also erroneously included therein the exemption of \$1200.00 for dependents appearing on line 9, subdivision f, of petitioner's said tax return.

(b) The inclusion of said sum of \$1200.00 in said "adjustments" on petitioner's U.S. Individual Income Tax Return for the taxable year 1969, thereby contributing to the statement in said return that his "Adjusted Gross Income" was \$44,370.25, was not made with the intent to defraud, but was a mistake that resulted from a lack of understanding on the petitioner's part as to the proper composition of said return.

13. The Internal Revenue Service did not make a finding of fraud or negligence in connection with the petitioner's U.S. Individual Income Tax Return for the taxable year 1969 and its total amount of audit changes for said year of \$7500.00 was made without the assessment of any penalty for either fraud or negligence.

14. The record does not establish that the items of business expense, contributions, interest and legal fees that were disallowed were set forth by the petitioners negligently or with an intent to defraud.

CONCLUSIONS OF LAW

A. That while there is a substantial discrepancy between actual net income and the taxable income reported by the petitioner for the taxable year 1969 in his "New York State Income Tax Resident Return 1969", the discrepancy was not motivated by an intent to defraud and fraud has not been established.

B. That the duplication of deductions amounting to the sum of \$35,477.59 in the petitioner's "New York State Income Tax Resident Return 1969" as set forth in the Findings of Fact, was not motivated by an intent to defraud but was caused by negligence, namely, the failure to exercise that degree of care that a reasonably prudent person would have exercised under the same circumstances.

C. That the inclusion of the sum of \$1200.00 in "adjustments" of \$52,646.96 on petitioner's U.S. Individual Income Tax Return for the taxable year 1969, although contributing to the statement in said return that his "Adjusted Gross Income" was \$44,370.25, was not made with the intent to defraud, nor was it an act of negligence, but was a mistake that resulted from a lack of understanding on the petitioner's part as to the proper composition of said return.

D. That the record does not establish a finding of either fraud or negligence with respect to the items of business expense, contributions, interest or legal fees that were disallowed by the Income Tax Bureau.

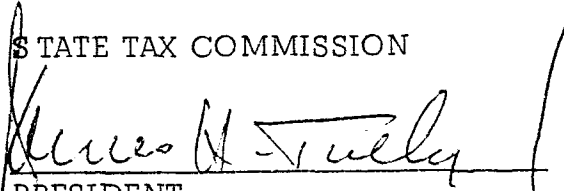
E. That in view of the foregoing Findings of Fact and Conclusions of Law the penalty imposed pursuant to section 685(e) of the Tax Law, based on deficiency due to fraud, is hereby cancelled and the 5% penalty provided to be added to the tax pursuant to section 685(b) based on deficiency due to negligence is imposed.

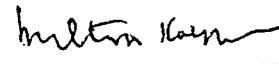
F. That the Income Tax Bureau is directed to modify the Notice of Deficiency dated December 22, 1975, in accordance with this decision and, except to the extent therein expressly granted, the petition is in all other respects denied.

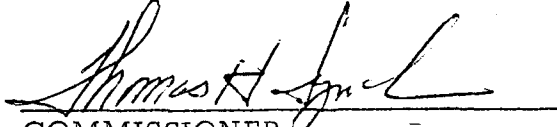
DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER