

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE HOGAN and CATHERINE HOGAN

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) ~~or Period(s)~~ :
1968 and 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 22nd day of August, 1977, she served the within
Notice of Decision by (certified) mail upon George & Catherine Hogan

(~~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. George Hogan
613 2nd Avenue
Troy, New York 12182

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

22nd day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE HOGAN and CATHERINE HOGAN

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) ~~xxxxxx~~
1968 and 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 22nd day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Monroe Van Valkenburgh

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Monroe M. Van Valkenburgh, P.A.
854 Fifth Avenue
Troy, New York 12182

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

22nd day of August, 1977.

Marsina Donnini

Just Mack



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

August 22, 1977

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

Mr. & Mrs. George Hogan
613 2nd Avenue
Troy, New York 12182

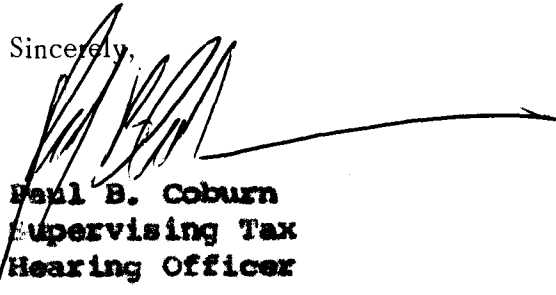
Dear Mr. & Mrs. Hogan:

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 & 722** 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 :
GEORGE HOGAN and CATHERINE HOGAN : 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 Years 1968 and 1969. :
:

Petitioners, George Hogan and Catherine Hogan, 613 2nd Avenue, Troy, New York 12182, filed a petition for redetermination of deficiencies in personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1968 and 1969. (File No. 01922)

A formal hearing was held at the offices of the State Tax Commission, Albany, New York, on January 21, 1976, and May 1, 1976 before L. Robert Leisner, Hearing Officer. The taxpayers appeared by Monroe VanValkenburgh. The Income Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq. of counsel).

ISSUE

Whether taxpayers' income from a grocery was understated in 1968 and 1969.

FINDINGS OF FACT

1. Petitioners, George Hogan and Catherine Hogan, timely filed New York State income and unincorporated business tax returns for the years 1968 and 1969.

2. Notices of deficiency in personal income and unincorporated business taxes for the years 1968 and 1969 were issued on December 27, 1971 against the taxpayers under File No. 9-32652943.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. In 1968, the taxpayers reported net profit from their grocery business of \$4,997.96 and after modifications total income of \$4,381.82.

5. In 1969, they reported profit from their grocery business of \$5,696.92 and after modifications total income of \$5,197.18.

6. The taxpayers operated a grocery store. They always employed a public accountant. Their books and records for the years involved were in order.

7. The Income Tax Bureau used a cash analysis, bank deposits method, and proposed an understatement of receipts of \$6,798.92 for 1968 and of \$3,833.97 for 1969. The Bureau's computation showed \$4,058.12 of personal checks for 1968 and \$2,339.00, for 1969.

8. The taxpayers' tax returns showed \$1,560.00 wholesale cost of grocery items withdrawn for 1968 on their tax return and \$1,820.00 wholesale cost of grocery items withdrawn for 1969. These items were not reflected in the Bureau's computations.

9. As part of the Bureau's reconstruction of the taxpayers alleged understatement of income, the Bureau's computation also proposed \$2,500.00 of out of pocket cash expenses in addition to the cancelled checks for personal items for each year.

10. George Hogan was ill but Catherine Hogan testified. She said both were older and unable to run the business profitably.

11. The taxpayer, Catherine Hogan, vigorously protested the proposed understatement. The Hogans had made business loans to keep the business going. The grocery business was highly competitive and in a high risk area and business results got worse each year and they closed up and went out of business a few years ago.

Catherine Hogan could not understand the complex accounting in this case but she insisted that the adjournments are erroneous. She testified to a very meagre cost of living. She also testified to a \$50.00 a week disability payment to George Hogan from the insurance company during the years in question. She asserted the loans and the disability payments were used for the business and living expenses. The evidence given by Catherine Hogan was true and uncontroverted.

12. The Hogans lived on their own premises near the grocery store and they lived very modestly. Considering the entire record, the facts that the Hogans were older and not well, that they did keep good books and records, and that they always employed a public accountant, and that they did the very best they could, we find that their books and records adequately reflected their income and their circumstances.

CONCLUSIONS OF LAW

A. That in reconstructions of income, computations must be reviewed on the basis of the evidence which gives rise to the

computation. The computation for 1969 shows \$2,339.85 of checks for personal business but it does not take into account \$1,820.00 of withdrawals, at wholesale cost, of groceries. We recognize not only the checks for personal expense, but also the withdrawals of groceries at wholesale expense and that the Hogans lived on their own premises, that they lived modestly, and that George Hogan also received \$50.00 weekly disability checks which were not taken into account. We cannot uphold the assertion of an additional \$2,500.00 out of pocket cash expense for 1969, nor the proposed understatement of \$3,833.97 in the face of these facts.

B. That in 1968, the personal expenses by check were \$4,058.12. The withdrawal of \$1,560.00 of groceries at wholesale has not been taken into account. The \$50.00 weekly disability checks have not been taken into account, nor the fact that the taxpayers lived on their own premises and they had a very modest cost of living, and required loans to keep going in 1968.

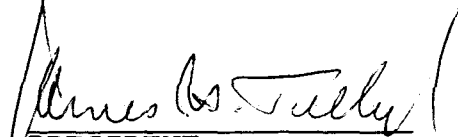
The proposed understatement of \$6,798.92 for 1968 based in part on an assertion of an additional \$2,500.00 out of pocket cash expense cannot be sanctioned when reconstruction does not take into account the foregoing factors. Taking into consideration bank loans in 1968, the \$4,058.13 of checks for personal items, the \$50.00 weekly disability checks, which were used for personal and business expenses, the \$1,560.00 of groceries at wholesale which groceries would approximate \$2,500.00 retail and taking

into consideration residing on the premises and a modest life style which would preclude an estimate of \$2,500.00 additional cash out of pocket expense, the proposed understatement of \$6,798.02 cannot be sustained.

C. That the proposed deficiencies in income tax and unincorporated business tax against George and Catherine Hogan for 1968 and 1969 are cancelled.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER