

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL and JANE RICCIARDI

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) 1972~~ 1972.:

State of New York
County of Albany

Bruce Batchelor, 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 18th day of January, 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Michael & Jane Ricciardi

~~(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 Ricciardi
166 Central Avenue
Lodi, New Jersey 07644

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)~~
~~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

18th day of January, 1977

Bruce Batchelor

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

January 18, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Michael Ricciardi
166 Central Avenue
Lodi, New Jersey 07644

Dear Mr. & Mrs. Ricciardi:

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,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~Director, Office of Tax Services~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MICHAEL and JANE RICCIARDI : 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 1972. :
:

Petitioners, Michael and Jane Ricciardi, 166 Central Avenue, Lodi, New Jersey 07644, 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 year 1972 (File No. 2-23408665).

A small claims hearing was held before Joseph Marcus, Hearing Officer, on August 20, 1976, at 10:45 A.M., at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se and for his wife, petitioner, Jane Ricciardi. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin A. Levy, Esq. of counsel).

ISSUES

I. Whether petitioner, Michael Ricciardi, an operator of an employment agency in New York State in 1972 was engaged in a business subject to the unincorporated business tax.

II. Whether petitioner, Michael Ricciardi, carried on his employment business within and without New York State and whether all of the business income received from such activities in 1972 was includible for New York personal income tax and unincorporated business tax purposes.

III. Whether the deduction of \$965.00 from petitioners total income constituted a proper deduction for 1972 New York State personal income tax purposes.

IV. Whether petitioner had reasonable cause for failure to file an unincorporated business tax return for the year 1972 and to pay the unincorporated business tax when due.

FINDINGS OF FACT

1. Petitioners, Michael and Jane Ricciardi, filed a New York State income tax (IT-203) nonresident return for the year 1972. Petitioner, Michael Ricciardi, reported on said return an amount of income for New York State that was less than the amount shown for Federal purposes. In addition, petitioner deducted \$965.00 from his total income without any explanation. Petitioner reported no unincorporated business tax.

2. Petitioner, Michael Ricciardi, was an operator of an employment agency in 1972 known as "Richard's Engineering Placement

Service" located at 30 Vesey Street, New York, New York, and all his business income was earned in this State.

3. On July 28, 1975, the Income Tax Bureau issued a Statement of Audit Changes, relating to petitioner's 1972 income tax return, in which it imposed additional personal income tax based on the difference between the reported Federal amount and the New York State amount, disallowing the reduction of income of \$965.00. The statement also imposed unincorporated business tax for 1972 together with penalties thereon under section 685(a)(1) and section 685(a)(2). In connection therewith, the Income Tax Bureau issued, on July 28, 1975, a Notice of Deficiency incorporating the audit changes referred to in the statement.

4. Petitioner, Michael Ricciardi, testified that his failure to report unincorporated business tax was the result of advice given him by his accountants, Murray and Toscano, 107 South Main Street, Lodi, New Jersey 07644, who told him that his employment business was exempt from unincorporated business tax.

5. Petitioner's deduction from income for personal income tax purposes of \$965.00 represented total contributions toward a "Kehoe" pension plan.

CONCLUSIONS OF LAW

A. That petitioner, Michael Ricciardi, conducted an unincorporated business within the meaning and intent of section 703 of the Tax Law for the year 1972.

B. That petitioner's employment business was carried on wholly within New York State and, therefore, all of his business income from such activities for the year 1972 was subject to unincorporated business tax without allocation.

C. That all of the business income reported by petitioner for Federal income tax purposes was derived from or connected with New York sources in accordance with the meaning and intent of 20 NYCRR 131.1. Therefore, income from business of \$41,183.26 was properly includible in computing petitioner's New York adjusted gross income for 1972.

D. That petitioner's deduction from total income of \$965.00 with respect to contributions to "Kehoe" pension plan constituted a proper deduction for 1972 New York State personal income tax purposes.

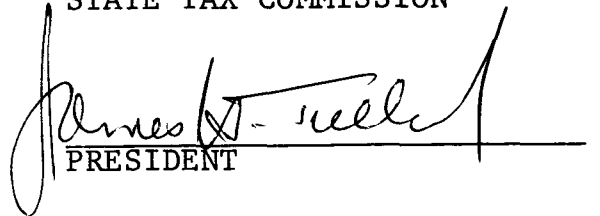
E. That petitioner had reasonable cause for failure to file a 1972 New York State unincorporated business tax return and to pay the unincorporated business tax due and therefore, the penalties imposed under section 685(a)(1) and 685(a)(2) of the Tax Law are waived.

F. That the petition of Michael Ricciardi is granted to the extent of cancelling the penalties imposed pursuant to section 685(a)(1) and section 685(a)(2) of the Tax Law and of allowing

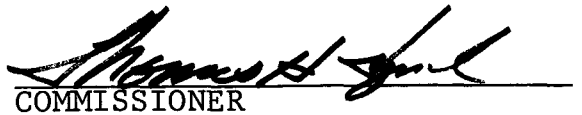
the deduction of \$965.00 previously disallowed in computing petitioners total income; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued July 28, 1975, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
January 18, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER