

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL BRAJER and JULIA BRAJER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income & Unincorporated :
Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ 1967 :
and 1968.

State of New York
County of Albany

John Huhn

, being duly sworn, deposes and says that

He is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April, 1978, He served the within

Notice of Decision

by ~~XXXXXX~~ mail upon Paul Brajer & Julia Brajer

~~XXXXXX~~ the petitioner in the within proceeding,

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


as follows: Paul Brajer & Julia Brajer
11/42 New Beach Road
Darling Point 2027, Australia

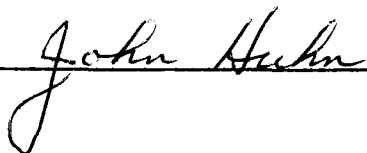
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

24th day of April, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL BRAJER and JULIA BRAJER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
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of Personal Income & Unincorporated :
Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ 1967 :
and 1968.

State of New York
County of Albany

John Huhn

, being duly sworn, deposes and says that

He is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April , 1978, He served the within

Notice of Decision by (certified) mail upon Matthew H. Bowcock, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Matthew H. Bowcock, Esq.
1271 Avenue of the Americas
New York, New York 10020

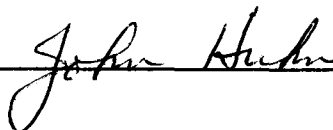
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

24th day of April , 1978.







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

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

April 24, 1978

**Paul Brajer & Julia Brajer
11/42 New Beach Road
Darling Point 2027, Australia**

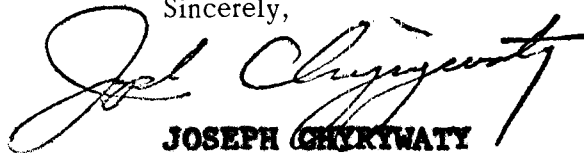
Dear Mr. & Mrs. Brajer:

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,


**JOSEPH CHYRTWATY
HEARING EXAMINER**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PAUL BRAJER and JULIA BRAJER : DECISION
for Redetermination of Deficiencies or :
for Refund of Personal Income or :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Years 1967 and 1968. :

Petitioners, Paul and Julia Brajer, 11/42 New Beach Road, Darling Point 2027, Australia, filed petitions for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1967 and 1968 (File No. 00090).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 21, 1977 at 1:15 P.M. The petitioners appeared by Matthew Bowcock, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

I. Whether the additional business income reflected in the Income Tax Bureau's audit of petitioner Paul Brajer's unincorporated business tax return for the years 1967 and 1968 was correct.

II. Whether the additional income reflected in the Income Tax Bureau's audit of petitioners, Paul and Julia Brajer's personal income tax returns for the years 1967 and 1968 was correct.

FINDINGS OF FACT

1. Petitioners, Paul Brajer and Julia Brajer, timely filed New York State resident income tax returns for the years 1967 and 1968. Petitioner Paul Brajer also timely filed unincorporated business tax returns for said years.

2. On March 20, 1972, the Income Tax Bureau issued Statements of Audit Changes against petitioners, Paul Brajer and Julia Brajer, and against petitioner Paul Brajer. The Statement of Audit Changes issued against Paul and Julia Brajer asserted additional personal income tax and the Statement of Audit Changes issued against Paul Brajer asserted additional unincorporated business tax. Both statements were based upon the result of a field audit performed by the Income Tax Bureau for the years 1967 and 1968. Accordingly, it issued notices of deficiency against Paul and Julia Brajer in the sum of \$3,718.26 and against Paul Brajer in the sum of \$1,668.21.

3. During the years in question, Paul Brajer owned and operated a jewelry manufacturing business. He manufactured such items as rings, bracelets, pins, etc. He sold only to wholesalers and retailers and did not sell merchandise to the general public.

4. The method used by the Income Tax Bureau in recomputing Paul and Julia Brajer's income was that of a "Source and Application of Funds" audit, which resulted in an unexplained source of funds of \$14,664.00 and \$10,068.00, respectively, for the years 1967 and 1968.

5. Paul Brajer contended that the Income Tax Bureau did not take into consideration all of the cash available to him from all non-income sources during the years 1967 and 1968. He maintained that for the year 1967, he received \$1,500.00 from his son, \$1,500.00 from his brother and \$5,000.00 from petitioner Julia Brajer's aunt, all in the form of cash. For the year 1968, he maintained that he received \$4,500.00 from his son, \$2,000.00 from his brother and \$1,500.00 from his nephew, all in the form of cash.

6. Julia Brajer received \$600.00 and \$640.00, respectively, for the years 1967 and 1968 as reparation payments from Germany, which the Bureau did not take into consideration as a source of funds available to the petitioners.

7. Paul Brajer submitted a sworn statement from his brother, while his son testified at the hearing regarding the alleged amounts of money in cash given to him by them. However, he did not submit any documentary evidence regarding the monies given to him by other members of his family for the years 1967 and 1968.

8. Petitioners, Paul and Julia Brajer, contended that based upon the aforesaid sources of cash available to them and their own cost-of-living estimates, the findings and methods used by the Income Tax Bureau were erroneous.

CONCLUSIONS OF LAW

A. That petitioners, Paul and Julia Brajer, have not sustained the burden of proof necessary to show (in accordance with the meaning and intent of section 689(e) of the Tax Law) that they did in fact receive \$8,000.00 in cash from various members of their family for each of the years 1967 and 1968.

B. That petitioners have not sustained the burden of proof necessary to show that the Income Tax Bureau's method and recomputations were inaccurate and/or incorrect.

C. That petitioners did receive \$600.00 and \$640.00, respectively, for the years 1967 and 1968 in reparation payments that were not included in the Income Tax Bureau's calculations.

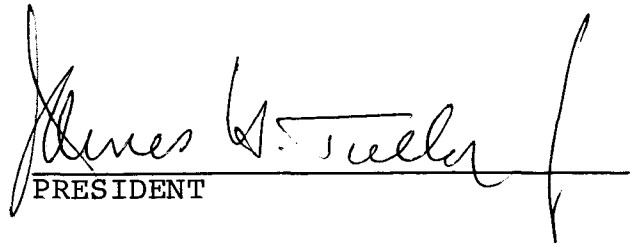
D. That the petition of Paul Brajer is granted to the extent of reducing the unexplained source of funds by \$600.00 and \$640.00, respectively, for the years 1967 and 1968. That the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued to him on March 20, 1972 and that, except as so granted, his petition is in all other respects denied.

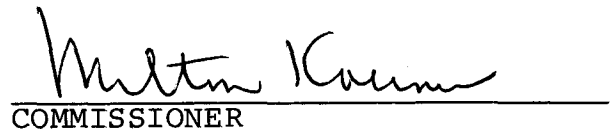
E. That the petition of Paul and Julia Brajer is granted to the extent of reducing the unexplained source of funds by \$600.00 and \$640.00, respectively, for the years 1967 and 1968. That the Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued to them on March 20, 1972 and that, except as so granted, their petition is in all other respects denied.

DATED: Albany, New York

April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER