

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN V. DI LORENZO

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 (x)~~ 1973. :

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 6th day of October, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon John V. DiLorenzo


~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Mr. John V. DiLorenzo
93 Union Street
Amsterdam, New York 12010

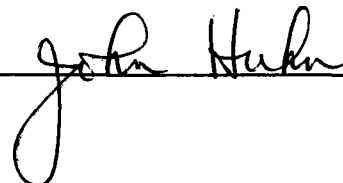
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~(x) or (x)~~ 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

6th day of October, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN V. DI LORENZO

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 (~~six~~ ~~Periods~~) 1973. :

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 6th day of October , 1978, he served the within
Notice of Decision by (certified) mail upon Norberta F. Krupczak

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Norberta F. Krupczak, Esq.
as follows: c/o Richard A. Insogna, Esq.
76 1/2 East Main Street
Amsterdam, New York 12010

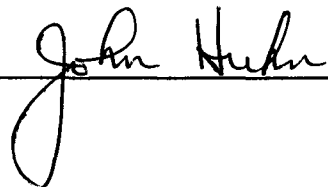
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

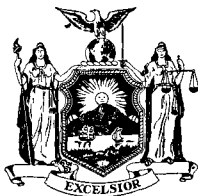
That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

6th day of October , 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

October 6, 1978

Mr. John V. DiLorenzo
93 Union Street
Amsterdam, New York 12010

Dear Mr. DiLorenzo:

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 ~~(x)~~ **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,

Michael Alexander
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 :
JOHN V. DI LORENZO : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1973 :

Petitioner, John V. Di Lorenzo, 93 Union Street, Amsterdam, New York, 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 1972 (File No. 01450).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on June 2, 1976 at 10:45 A.M., and continued on May 3, 1977 at 10:45 A.M. and on May 6, 1977 at 9:15 A.M. Petitioner appeared by Richard A. Insogna, Esq. (Norberta F. Krupczak, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. and Harry Kadish, Esq., of counsel).

ISSUES

I. Whether money found in petitioner's home during a New York State police raid in 1972, constituted gambling earnings.

II. Whether the Income Tax Bureau correctly projected gambling earnings of petitioner in 1972.

FINDINGS OF FACT

1. Petitioner, John V. Di Lorenzo, and his wife, Loretta A. Di Lorenzo, filed a joint New York State resident income tax return for 1972, on which they listed \$4,664.00 as their adjusted gross income from their Federal return for that year. They listed the same amount as their "total New York Income" on line 5 of said return.

2. On October 2, 1972, petitioner, John V. Di Lorenzo, was arrested by the New York State Police who seized \$5,524.00 in cash, plus gambling records, at his home. The gambling records were on a stand next to petitioner and the cash was in the open on a couch in the same room. Petitioner subsequently pled guilty to a charge of possession of gambling records in connection with the arrest.

3. On October 3, 1972, as a result of the above-mentioned arrest and seizure of cash and gambling records, the Income Tax Bureau terminated petitioner's tax year, pursuant to section 694(1) of the Tax Law. It issued a jeopardy assessment based on a projected income of \$55,400.00 for the period January 1, 1972 through October 3, 1972. Accordingly, the Bureau issued a Notice of Deficiency on October 30, 1972 for personal income tax of \$6,785.50.

4. The Income Tax Bureau offered no basis for the \$55,400.00 projected figure of petitioner's income in 1972.

5. Petitioner submitted a letter from Wendell C. Williams (a coin dealer) stating, in part, that on August 4, 1972, Mr. Williams purchased a quantity of silver coins from petitioner for \$7,000.00 in cash, plus a check for \$1,757.35.

6. Petitioner contended that the seized money (as stated in Finding of Fact "2") was part of the money received in exchange for the sale of coins to a dealer mentioned in Finding of Fact "5".

7. Petitioner was engaged in a gambling business in 1972.

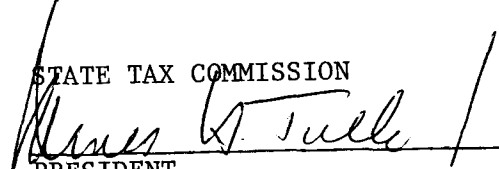

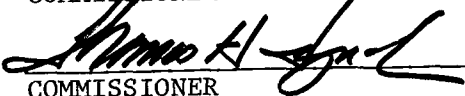
CONCLUSIONS OF LAW

A. That petitioner, John V. Di Lorenzo, was engaged in an illegal gambling business during 1972; that the sum of \$5,524.00 seized in the gambling raid by New York State Police constituted unreported income from unexplained sources and, therefore, was subject to New York State personal income tax.

B. That the Income Tax Bureau's projection of taxable income of \$55,400.00 is an arbitrary figure. There is no evidence in the record to indicate how said figure was arrived at, nor is there evidence to show that a proper audit was conducted by the Bureau.

C. That the petition of John V. Di Lorenzo is granted to the extent that New York taxable income for 1972 is reduced from \$55,400.00 to \$7,388.00; that the Income Tax Bureau is hereby directed to accordingly modify the Jeopardy Assessment issued October 3, 1972 and the Notice of Deficiency issued October 30, 1972 by reducing the personal income tax from \$6,785.50 to \$290.37, plus interest, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
October 6, 1978

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER