

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Michael Giovengo :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1973. :

State of New York

County of Albany

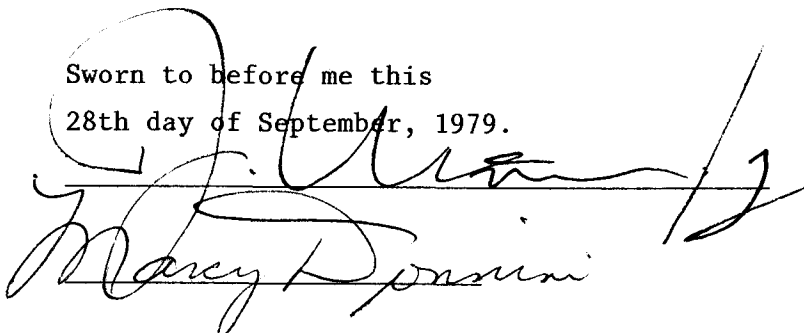
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Michael Giovengo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Giovengo  
1884 W. 11th St.  
Brooklyn, NY 11223

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
28th day of September, 1979.

  
Nancy P. Spasini

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Michael Giovengo  
1884 W. 11th St.  
Brooklyn, NY 11223

Dear Mr. Giovengo:

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,



cc: Petitioner's Representative  
Taxing Bureau's Representative



2. On May 24, 1976, the Income Tax Bureau issued a Notice of Deficiency for 1973, on which it disallowed five exemptions. This was done on the grounds that petitioner did not submit information which was needed to complete the audit of his return. Said Notice asserted personal income tax of \$382.32, plus \$60.41 in interest, for a total due of \$442.73.

3. The Income Tax Bureau made other adjustments to petitioner's tax return which he did not contest, and which are not at issue.

4. In 1970 a Family Court order gave custody of four of the five children to petitioner and his wife, said wife being the children's maternal grandmother. Subsequently, the fifth child came to live in his home. The children ranged in age between six and twelve years. During all of 1973, the five children lived in petitioner's home and continued to live there until 1976, when their divorced mother overcame her psychological problems and reclaimed them. Petitioner was the sole support of all five children.

#### CONCLUSIONS OF LAW

A. That petitioner, Michael Giovengo, properly claimed exemptions for his wife's five grandchildren on his New York State personal income tax return for 1973, in accordance with the meaning and intent of section 152 of the Internal Revenue Code.

B. That the petition of Michael Giovengo is granted to the extent shown in Conclusion of Law "A."

C. That the Income Tax Bureau is directed to so modify the Notice of Deficiency issued May 24, 1976, by reducing the personal income tax due from \$382.32 to \$90.08, but that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER