

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Sam Panebianco :

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

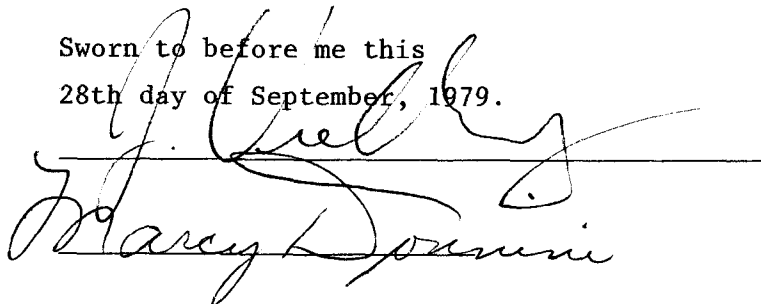
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Sam Panebianco, the petitioner in the within proceeding,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

Sam Panebianco
RD #2, Chestnut Ridge Rd.
Chittenango, NY 13037

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.


Mary L. Spurr

STATE OF NEW YORK
STATE TAX COMMISSION

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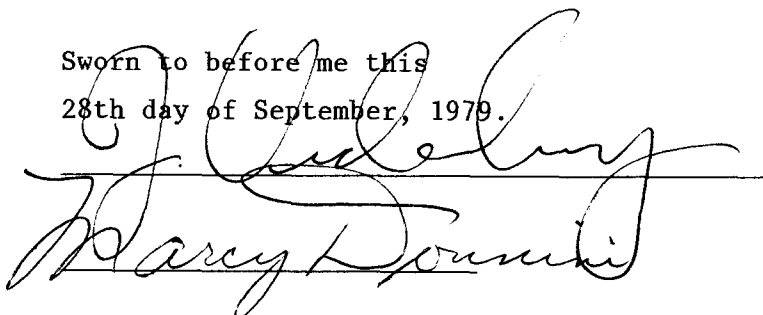
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Kevin Fahey the representative of the petitioner in the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

Mr. Kevin Fahey
Coopers & Lybrand
One Lincoln Center
Syracuse, NY 13202

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
28th day of September, 1979.



Mary D. Dunning



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Sam Panebianco
RD #2, Chestnut Ridge Rd.
Chittenango, NY 13037

Dear Mr. Panebianco:

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,

Robert F. Kennedy

cc: Petitioner's Representative
Kevin Fahey
Coopers & Lybrand
One Lincoln Center
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SAM PANEBIANCO	:	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, Sam Panebianco, R.D. #2, Chittenango, New York 13037, filed a petition for revision of a determination or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 12298).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, 33 East Washington Street, Syracuse, New York, on July 20, 1977 at 2:45 P.M. Petitioner appeared by Coopers & Lybrand, CPA's, (Kevin Fahey, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner properly deducted a farm loss for 1973.

FINDINGS OF FACT

1. Petitioner, Sam Panebianco, and Ida Panebianco, his wife, timely filed a New York State combined income tax resident return for 1973, on which petitioner deducted a farm loss of \$49,611.98.

2. On June 30, 1975, the Income Tax Bureau issued a Notice of Deficiency and an explanatory Statement of Audit Changes to petitioner, which disallowed \$48,171.00 claimed as ordinary farm expenses and treated same as part of his inventory. This change resulted in an adjustment increasing petitioner's taxable income by \$48,171.00.

3. Petitioner, Sam Panebianco, was a partner with his brother in the operation of a potato farm. During 1973 the partners decided to dissolve the partnership and terminate partnership activities as of December 31, 1973. The partners agreed that petitioner would purchase his brother's interest. As a condition of sale, all potato stocks were to be sold by December 31, 1973 and the proceeds credited to the partnership. In addition, petitioner was forbidden to be actively involved in the operation of a farm as a sole proprietor prior to December 31, 1973.

4. In order to take advantage of lower prices during December of 1973, petitioner purchased seed potatoes with his own funds at a cost of \$29,400.00, as well as potato stock for resale at a cost of \$18,771.71. These purchases were made primarily in anticipation of and preparation for his activities as a sole proprietor in the operation of the potato farm commencing January 1, 1974.

5. The partners, while operating the farm as a partnership, and petitioner, while operating it as a sole proprietorship, utilized the cash basis of accounting and filed tax returns on a calendar year basis. It was also the consistent practice of both the partnership and petitioner to purchase seed and stock potatoes for use in the following calendar year, and to deduct the cost in the year of payment.

6. Petitioner's distributive share of partnership income was \$33,462.96 in 1971, \$13,762.31 in 1972 and \$77,895.69 in 1973. The large increase in 1973 was due to the sale of all partnership crops (prior to December 31, 1973), together with the partnership's failure to continue its normal practice of purchasing seed potatoes and potato stock at the end of the calendar year.

7. The Income Tax Bureau contended that the \$48,171.00 deduction at issue created a distortion of income for 1973. Petitioner refuted this contention by arguing that the net difference between the partnership income of \$77,895.69 and the farm loss of \$49,611.98 was a profit of \$28,283.71, which was consistent with partnership income reported in prior years.

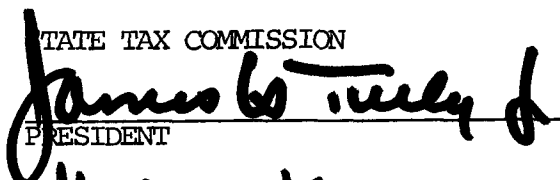

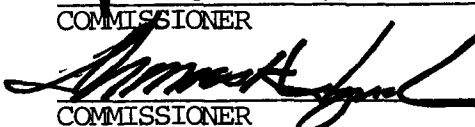
CONCLUSIONS OF LAW

A. That petitioner, Sam Panebianco, was actively engaged without interruption, in the business of farming for profit, regardless of whether his activities were performed as a partner or as a sole proprietor. The purchase of seed potatoes and potato stock during December of 1973 constituted an ordinary and necessary expense incurred in carrying on his business, which did not create a material distortion of income; as such, it is a deduction allowable under section 162(a) of the Internal Revenue Code, Treas. Reg. section 1.162-12 and Article 22 of the Tax Law.

B. That the petition of Sam Panebianco is granted and the Notice of Deficiency issued on June 30, 1975 for 1973 is cancelled.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER