

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Robert & Sandra Gardos :  
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 1974. :

AFFIDAVIT OF MAILING

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Robert & Sandra Gardos, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert & Sandra Gardos  
Cedar Hill Rd.  
Bedford Village, NY 10506  
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  
3rd day of October, 1980.

Debbie Brink

J. Vredenburg

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

October 3, 1980

Robert & Sandra Gardos  
Cedar Hill Rd.  
Bedford Village, NY 10506

Dear Mr. & Mrs. Gardos:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ROBERT GARDOS and SANDRA GARDOS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

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Petitioners, Robert Gardos and Sandra Gardos, Cedar Hill Road, Bedford Village, New York 10506, 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 1974 (File No. 20097).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 15, 1980 at 1:15 P.M. Petitioner Robert Gardos appeared pro se and for his wife. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

Whether the petition of Robert Gardos and Sandra Gardos was filed timely.

FINDINGS OF FACT

1. On July 14, 1976, the Audit Division issued a Statement of Audit Changes to petitioners, wherein, as the result of their failure to appear for a scheduled audit, amounts claimed for certain itemized deductions and employee business expenses were disallowed in their entirety. Accordingly, a Notice of Deficiency was issued against petitioners on May 23, 1977, asserting additional personal income tax of \$800.59, plus interest of \$143.19 for a total due of \$943.78. Said Notice was sent by certified mail from Albany, New York on the

above stated issuance date, as evidenced by petitioners' envelope bearing certified number 28500.

2. On May 28, 1977, the post office issued a notice to petitioners advising them that they held a piece of certified mail addressed to them. Since, petitioners at that time were in Washington, D.C., receipt of such certified mail (Notice of Deficiency) did not occur until June 10, 1977.

3. Subsequent to the receipt of the Notice of Deficiency, petitioner Robert Gardos made several trips to the White Plains District Office for the purpose of obtaining a copy of the "Rules of Practice" so that he could properly file a petition. This action was taken pursuant to the instructions printed on the Notice of Deficiency wherein it states: "You may obtain instructions for filing a petition with the Tax Commission from the Income Tax Bureau or from any district tax office; ask for the "Rules of Practice" before the Commission." On each occasion petitioner was advised by the personnel of said district office, that none were available since the Commission was in the process of revising them. Petitioner contended that he then requested same in writing from the State Tax Commission, but no response was received.

4. On August 31, 1977, petitioners sent a petition facsimile to the State Tax Commission by certified mail. Subsequently, they were notified that the petition, which was mailed one hundred days from the date of Notice of Deficiency, was untimely filed and that the case file had been referred to the Income Tax Bureau for collection action.

5. On January 9, 1978, petitioners filed a Perfected Petition, wherein they contended that the original petition dated August 31, 1977 should not be dismissed since it, was mailed eighty one days from receipt, and the "Rules of Practice" were unobtainable.

CONCLUSIONS OF LAW

A. That section 689(b) of the Tax Law provides that:

"Within ninety days, or one hundred fifty days if the notice is addressed to person outside of the United States, after the mailing of the notice of deficiency authorized by section six hundred eighty-one, the taxpayer may file a petition with the tax commission for a redetermination of the deficiency."

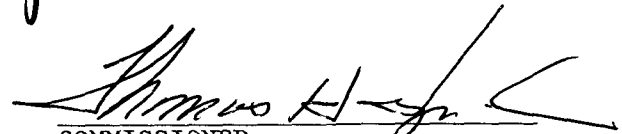
B. That since the original petition filed by petitioners, Robert Gardos and Sandra Gardos, was not mailed until August 31, 1977, which was one hundred days from the mailing date of the Notice of Deficiency, said petition was not timely filed. Accordingly, said petition is, therefore, in all respects denied.

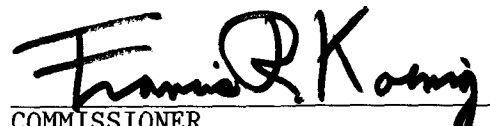
DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER