

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

J. David & Susan Goldin :

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 Years 1968, 1969 & 1970. :

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 25th day of April, 1980, he served the within notice of Decision by certified mail upon J. David & Susan Goldin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

J. David & Susan Goldin

P.O. Box H

Croton-on-Hudson, NY 10520

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
25th day of April, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Personal Income Tax :
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for the Years 1968, 1969 & 1970. :

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 25th day of April, 1980, he served the within notice of Decision by certified mail upon Michael A. Bank 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. Michael A. Bank
1250 Broadway
New York, NY 10001

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
25th day of April, 1980.

Joanne Knapp

J. Vredenburg

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

April 25, 1980

J. David & Susan Goldin
P.O. Box H
Croton-on-Hudson, NY 10520

Dear Mr. & Mrs. Goldin:

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
Michael A. Bank
1250 Broadway
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
J. DAVID GOLDIN and SUSAN GOLDIN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1968, 1969 and 1970.	:	

Petitioners, J. David Goldin and Susan Goldin, Post Office Box H, Croton-on-Hudson, New York 10520, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968, 1969 and 1970 (File No. 16329).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 13, 1978 at 2:45 P.M. Petitioners appeared by Michael A. Bank, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the Income Tax Bureau properly imposed a fifty percent fraud penalty on petitioners, solely on the basis that reported Federal income tax changes had been settled by a stipulation as to Federal income tax liabilities, which included a fifty percent penalty.

FINDINGS OF FACT

1. On March 22, 1972, the Income Tax Bureau issued a Notice and Demand for Payment of Personal and Unincorporated Business Taxes Under Jeopardy

Assessment against petitioners, J. David Goldin and Susan Goldin, his wife, for 1968, 1969 and 1970 detailed as follows:

	<u>1968</u>	<u>1969</u>	<u>1970</u>
Adjusted N.Y. Taxable Income	\$233,000.00	\$233,000.00	\$233,000.00
Tax on Above	31,180.00	31,180.00	31,180.00
Statutory Credit	25.00	25.00	25.00
Net Personal Income Tax	\$ 31,155.00	\$ 31,155.00	\$ 31,155.00
Tax Previously Paid	464.55	340.80	568.04
Additional Tax Due	\$ 30,690.45	\$ 30,814.20	\$ 30,586.96
Total Tax Due		\$92,091.61	
Interest		<u>10,702.65</u>	
TOTAL DUE			\$102,794.26

2. On April 14, 1972, the Income Tax Bureau issued a Notice of Deficiency against petitioners, J. David Goldin and Susan Goldin, for an income tax deficiency for 1968, 1969 and 1970 of \$92,091.61, plus interest of \$10,702.65, for a total allegedly due of \$102,794.26.

3. On July 11, 1972, J. David Goldin and Susan Goldin timely filed a petition for redetermination of a deficiency in personal income tax for 1968, 1969 and 1970.

4. On October 31, 1974, the attorney for petitioners wrote a letter to the Department of Taxation and Finance stating, inter alia:

"...we wish to inform you that there is currently before U. S. Tax Court a case; J. David and Susan Goldin v. Commissioner of Internal Revenue, docket no. 6051-72, regarding the years 1968, 1969 and 1970 which encompasses the same issues as does the matter with New York State."

5. On August 17, 1976, the Income Tax Bureau wrote to petitioners' attorney acknowledging receipt of unsigned Forms IT-115 for 1968, 1969 and 1970. The Income Tax Bureau stated that since review of the Forms IT-115 showed that there had been a Federal income tax fraud penalty of 50% assessed,

for New York State income tax purposes, penalty would also be due at the rate of 50% of the recomputed tax. This penalty would be \$2,341.73 for 1968, \$2,936.81 for 1969 and \$3,095.01 for 1970, for a total of \$8,373.55. This would then make the liability \$16,747.10 for tax, \$8,373.55 for penalty and \$6,189.76 for interest. The combined liability was stated to be \$31,310.41.

6. The Tax Court matter involving petitioners was settled by stipulation in June of 1976. It details Federal taxable income of \$46,984.17 for 1968, \$54,073.46 for 1969 and \$58,903.66 for 1970. A fifty-percent penalty was added to the Federal income tax computed as due for each of the years 1968, 1969 and 1970.

7. On September 8, 1976, the Income Tax Bureau reduced the deficiency in tax by \$66,970.96 thus, reducing the total deficiency to \$25,120.65 plus \$6,189.76 in interest.

8. The Forms IT-115 submitted by petitioners indicated additional New York State personal income tax due of \$4,683.46 for 1968, \$5,873.61 for 1969 and \$6,190.03 for 1970. The Income Tax Bureau agreed that these computations were accepted as correct.

9. The stipulation settling the Tax Court case involving petitioners contains no statement of the facts underlying the litigation. There are neither admissions nor stipulations of facts. The stipulation shows only "...the petitioners' income tax liabilities and liabilities for additions to the tax for the taxable years 1969 and 1970." The included Statement of Income Tax Changes (Form 5278) shows how the Federal deficiency was computed for 1968, 1969 and 1970.

10. The Income Tax Bureau adduced no evidence as to the underlying facts upon which its assessment of fraud penalty was predicated, other than the Federal

stipulation of settlement. There was disputed heresay evidence that the New York State Police had obtained custody of \$99,000.00 of petitioners' cash in March of 1972. The source of these funds was neither questioned nor explained during the hearing.

CONCLUSIONS OF LAW

A. That the burden of proof in any hearing is prescribed by section 689(e) of the Tax Law. That burden is on the taxpayer except in three instances, the first of which is "whether the petitioner has been guilty of fraud with intent to evade tax..." (section 689(e)(1)).

In those enumerated instances, the burden of proof is on the Tax Commission.

B. That evidence of a Federal determination relating to issues in a case before the Tax Commission is admissible under section 689(f) of the Tax Law, but the weight to be given such determination is not prescribed. Under 20 NYCRR 153.4, the Federal determination is not binding on the Commission.

C. That where a taxpayer against whom a New York State tax fraud penalty is asserted files a timely petition for redetermination, the State Tax Commission is put to its proof. The standard of proof necessary to support a finding of fraud by the Tax Commission requires clear, definite and unmistakable evidence of every element of fraud, including willful, knowledgeable and intentional wrongful acts or omissions constituting false representation, resulting in deliberate nonpayment or underpayment of taxes due and owing. The Income Tax Bureau failed to sustain its burden of proof as to fraud.

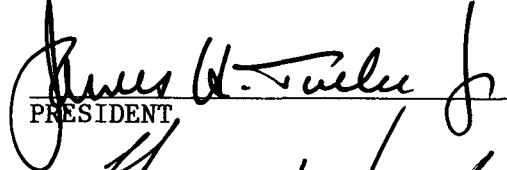
D. That the petition of J. David Goldin and Susan Goldin is granted to the extent that the jeopardy assessment dated March 22, 1972 and the Notice of

Deficiency dated April 14, 1972 (both as partially abated Sept. 8, 1976) are modified to the extent of deleting the 50% penalty of \$8,373.55; and that, except as so granted, the petition is otherwise denied.

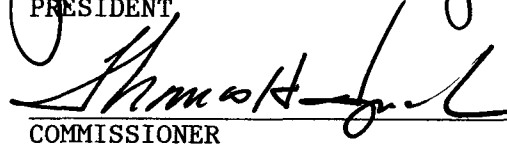
DATED: Albany, New York

APR 25 1980

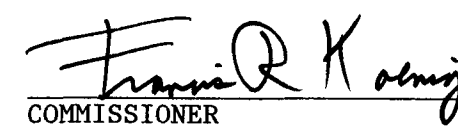
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER