

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Thomas J. & Carol L. Julia :

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 1966 & 1967. :

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 5th day of September, 1980, he served the within notice of Decision by certified mail upon Thomas J. & Carol L. Julia, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

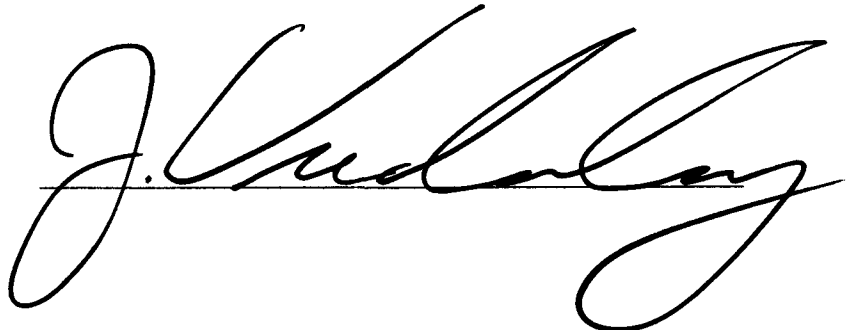
Thomas J. & Carol L. Julia
2939 Ocean Ave., Apt. 2B
Brooklyn, NY 11235

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
5th day of September, 1980.


Notary Public



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

September 5, 1980

Thomas J. & Carol L. Julia
2939 Ocean Ave., Apt. 2B
Brooklyn, NY 11235

Dear Mr. & Mrs. Julia:

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

In the Matter of the Petition	:	
	:	
of	:	
	:	
THOMAS J. JULIA and CAROL L. JULIA	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1966 and 1967.	:	

Petitioners, Thomas J. Julia and Carol L. Julia, 2835 Ocean Avenue, Apt. 2B, Brooklyn, New York 11235, 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 1966 and 1967 (File No. 01292).

A formal hearing was held before Neil Fabricant, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 23, 1977 at 10:45 A.M. Petitioners appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether petitioners are liable for a fraud penalty for the omission of income based on a net worth analysis for 1966 and 1967.

FINDINGS OF FACT

1. Petitioners, Thomas J. Julia and Carol L. Julia, timely filed New York State income tax returns for 1966 and 1967 reporting income of \$4,471.22 and \$28,278.68, respectively.

2. On July 27, 1970, the Income Tax Bureau issued two notices of deficiency.

One notice was to Thomas J. Julia and Carol L. Julia for the year 1966 and asserted additional tax due of \$2,851.15 and a 50 percent fraud penalty of \$1,425.57, plus interest. The deficiency in tax was based on omitted income of \$33,474.10.

The other notice was to Thomas J. Julia for the year 1967 and asserted additional tax due of \$9,875.79 and a 50 percent fraud penalty of \$4,937.90, plus interest. The deficiency in tax was based on omitted income of \$98,757.51.

3. Petitioner Thomas J. Julia received unreported income of \$33,474.10 and \$98,757.51, respectively, during the taxable years 1966 and 1967. This finding is not based upon the guilty plea of petitioner Thomas J. Julia to a charge of grand larceny in the first degree or any other material connected with the indictment involved, but is based upon the net worth analysis which traced various checks from one Mrs. Bisofsky to the bank accounts of petitioners.

4. Irving Friedman, Associate Special Tax Investigator, testified at the hearing that he traced all the deposits and withdrawals in various known bank accounts held by the petitioners. Net worth statements were prepared and the income in net worth for each year was added to personal expenses, living expenses, personal withdrawals or expenses incurred for personal use, and the resulting total was compared with the gross income reported to determine the unreported income. During the period under audit, it was determined petitioners purchased a race horse, bought securities at a cost of \$52,328.90, bought a Cadillac automobile and owned a Mercedes Benz, and it was determined that petitioners made cash withdrawals in 1967 of \$60,112.62.

5. Petitioner Thomas J. Julia testified that he did not work because he had a nervous condition which he has been treated for since 1952. He testified that if deposits were made into his bank accounts, he must have made them. He stated that he went to the race track during that period and he would take out \$3,500.00 or \$4,000.00 in the morning and then either the next day or the day after, he would put the same money back. He testified that Mrs. Bisofsky's son was very free with money and that he received five thousand dollars or so from him. He claimed that Mrs. Bisofsky owed him about thirty-some odd

thousand dollars. He testified that the money he had was from gambling earnings at the race track.

6. The 1966 New York State Income Tax Return was prepared by petitioner Thomas J. Julia. He testified that he knew he was making money at the race track, but he did not report the race track earnings on the return. The 1967 New York State Income Tax Return was prepared by a certified public accountant based on information from petitioners. On this return, about \$37,000.00 was reported as other source income. Petitioner Thomas J. Julia assumed this income represented his gambling earnings for 1967.

7. Petitioners failed to submit any evidence to show that the auditor's figures were incorrect. Petitioners admitted to the additional income and questioned only the source.

CONCLUSIONS OF LAW

A. That petitioners, Thomas J. Julia and Carol L. Julia, failed to submit any documentary or other evidence to establish that the additional income determined by the Income Tax Bureau was erroneous as required by section 689(e) of the Tax Law.

B. That the auditor testified that petitioners, during the years at issue, purchased a race horse, bought securities costing \$52,328.90, bought a Cadillac automobile and owned a Mercedes Benz. Petitioners reported income of \$4,471.22 and \$28,278.28 for 1966 and 1967, respectively. Petitioner Thomas J. Julia did not work during the two years at issue. Petitioner Thomas J. Julia testified he knew he was making money at the race track, but he did not report the race track earnings. "A failure to report for taxation income unquestionably received, such action being predicted on a patently lame and untenable excuse, would seem to permit of no difference of opinion. It evidences a fraudulent purpose" M. Rea Gano, 19 BTA 518. "Discrepancies of 100% and

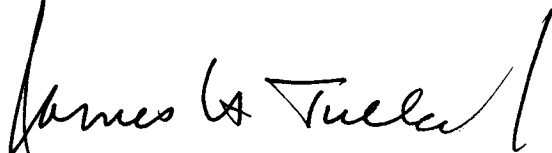
more between the real net income and the reported income for three successive years (in this instance two successive years) strongly evidence an intent to defraud the Government" Rogers et ux v. Commissioner, 40-1 USTC 9459, aff'g. Decision 38 BTA 16, L. Fred Talbot, 22 TCM 1686. Based on the above, the Audit Division met the burden of proof imposed by section 689(e)(1) of the Tax Law to show that petitioners are liable for the fraud penalty.

C. That the notices of deficiency issued July 27, 1970 against petitioners, Thomas J. Julia and Carol L. Julia, for 1966 and against petitioner, Thomas J. Julia, for 1967 are sustained and that the petition of Thomas J. Julia and Carol L. Julia is denied.

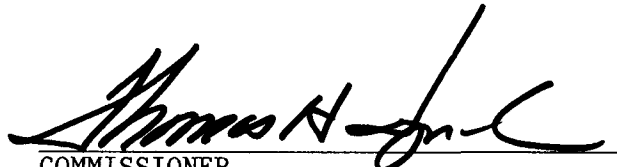
DATED: Albany, New York

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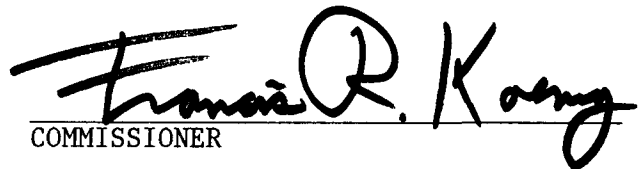
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER