

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert A. Kazmierski :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income & UBT :
under Article 22 & 23 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 11th day of January, 1980, he served the within notice of Decision by certified mail upon Robert A. Kazmierski, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert A. Kazmierski
321 North Perry St.
Johnstown, NY 12095

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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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for Redetermination of a Deficiency or a Revision :

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Personal Income & UBT :

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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 11th day of January, 1980, he served the within notice of Decision by certified mail upon John R. Gleason 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. John R. Gleason
200 West Main St.
Johnstown, NY 12095

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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 11, 1980

Robert A. Kazmierski
321 North Perry St.
Johnstown, NY 12095

Dear Mr. Kazmierski:

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 & 722 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
John R. Gleason
200 West Main St.
Johnstown, NY 12095
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT A. KAZMIERSKI	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Year 1973.	:	

Petitioner, Robert A. Kazmierski, 321 North Perry Street, Johnstown, New York 12095, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1973 (File No. 14928).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on February 9, 1979 at 9:15 A.M. Petitioner appeared with John R. Gleason, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Kathy L. Sanderson, Esq., of counsel).

ISSUE

Whether the results of an Income Tax Bureau field audit properly reflected petitioner's income for 1973.

FINDINGS OF FACT

1. Petitioner, Robert A. Kazmierski, timely filed a New York State Income Tax Resident Return for 1973. Also attached was a New York State Unincorporated Business Tax Return for his taxidermy business.

2. On October 6, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioner for additional personal income and unincorporated business taxes due for 1973 based on a cash analysis and a source and application of funds audit, wherein it was found petitioner had \$17,142.89 of unreported income. On February 24, 1976, the Bureau issued a Notice of Deficiency in the amount of \$1,289.63 in personal income tax and \$566.46 in unincorporated business tax, plus \$92.80 in penalty, pursuant to Section 685(b) of the Tax Law, and \$259.33 in interest, for a total due of \$2,208.22.

3. Petitioner contended that he received cash loans of \$16,000.00 or more from his father in order to make capital improvements to his business and that said amounts represented the unreported income determined by the examining agent.

4. There were no records as to the precise amounts of loans nor were any of the loans documented.

5. Petitioner's father, William A. Kazmierski, contended that he accumulated large sums of money at home because he does not trust banks and from these funds he made loans to his son.

CONCLUSIONS OF LAW

A. That petitioner has not presented evidence to show that the Notice of Deficiency dated February 24, 1976 was incorrect, and thereby has failed to sustain the burden of proof imposed by Sections 689(e) and 722 of the Tax Law.

B. That the New York taxable income of petitioner, Robert A. Kazmierski, was correctly determined for personal income tax purposes for the taxable year 1973 and that taxable business income of petitioner, Robert A. Kazmierski, was correctly determined for unincorporated business tax purposes for 1973.

C. That the petition of Robert A. Kazmierski is denied and the Notice of Deficiency issued February 24, 1976 is sustained.

DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER