

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

William A. & Helen Kazmierski :

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 11th day of January, 1980, he served the within notice of Decision by certified mail upon William A. & Helen Kazmierski, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William A. & Helen Kazmierski  
321 N. 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 Krapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
William A. & Helen Kazmierski :

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 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

William A. & Helen Kazmierski  
321 N. Perry St.  
Johnstown, NY 12095

Dear Mr. & Mrs. 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 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

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In the Matter of the Petition :  
of :  
WILLIAM A. KAZMIERSKI and HELEN KAZMIERSKI : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1973. :

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Petitioners, William A. Kazmierski and Helen Kazmierski, 321 North Perry Street, Johnstown, New York 12095, 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 1973 (File No. 14975).

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 William A. Kazmierski appeared by 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 petitioners' income for the year 1973.

FINDINGS OF FACT

1. Petitioners, William A. Kazmierski and Helen Kazmierski, timely filed a joint New York State Income Tax Resident Return for 1973. Also attached was a New York State Unincorporated Business Tax Return and supporting schedule.

2. On October 6, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for additional personal income tax due for 1973 based on a cash analysis audit wherein it was found that petitioners had

\$8,125.09 of unreported income. In accordance with the aforesaid Statement of Audit Changes, the Bureau issued on February 24, 1976 a Notice of Deficiency in the amount of \$688.93 in personal income tax, plus \$34.45 in penalty pursuant to Section 685(b) of the Tax Law and \$96.26 in interest, for a total due of \$819.64.

3. Petitioners contended that the Income Tax Bureau failed to consider the following sources of income in the Bureau's analysis.

(a) A Federal income tax refund of \$1,264.00 for which petitioners submitted a copy of their 1972 U.S. Individual Income Tax Return.

(b) Proceeds of \$1,000.00 from the sale of one 1961 Ford dump truck for which petitioners submitted a copy of a bill of sale dated January 25, 1973 and signed by petitioner William A. Kazmierski.

(c) Petitioner William A. Kazmierski stated that he accumulated large sums of money at home and that on January 1, 1973, petitioners had over \$22,000.00 cash on hand.

#### CONCLUSIONS OF LAW

A. That petitioners are entitled to have the unreported income reduced by the Federal tax refund of \$1,264.00 as a non-business source of income, however, they have failed to submit such evidence to show wherein the Notice of Deficiency dated February 24, 1976 was otherwise incorrect and they have failed to sustain the burden of proof imposed by Section 689(e) of the Tax Law.

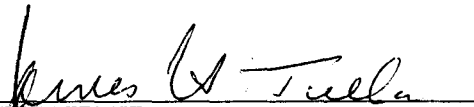
B. That the petition of William A. Kazmierski and Helen Kazmierski is granted to the extent of reducing the unreported income by \$1,264.00. The

Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued February 24, 1976, and that, except as so granted, the petition is in all other respects denied.

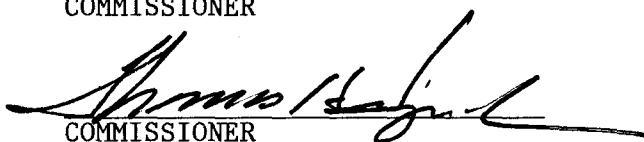
DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER