

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Emil & Emily Panichi :

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 Years 1972 - 1974. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jean Schultz, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of February, 1980, she served the within notice of Decision by certified mail upon Emil & Emily Panichi, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Emil & Emily Panichi
Watch Hill Dr.
Fishkill, NY 12524

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
29th day of February, 1980.

Joanne Krapp

Jean Schultz

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Emil & Emily Panichi :

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 Years 1972 - 1974. :

State of New York

County of Albany

Jean Schultz, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of February, 1980, she served the within notice of Decision by certified mail upon Paul A. Baldovin 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. Paul A. Baldovin
2 LaGrange Ave., Suite 201
Poughkeepsie, NY 12602

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
29th day of February, 1980.

Joanne Knapp

Jean Schultz

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

February 29, 1980

Emil & Emily Panichi
Watch Hill Dr.
Fishkill, NY 12524

Dear Mr. & Mrs. Panichi:

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
Paul A. Baldovin
2 LaGrange Ave., Suite 201
Poughkeepsie, NY 12602
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EMIL PANICHI and EMILY PANICHI	:	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 Years 1972, 1973 and 1974.	:	

Petitioners, Emil Panichi and Emily Panichi (his wife), Watch Hill Drive, Fishkill, New York 12524, 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 years 1972, 1973 and 1974 (File No. 15153).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on July 25, 1977 at 1:15 P.M. Petitioners appeared by Paul A. Baldovin, CPA. The Audit Division appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUE

Whether the deficiency in personal income and unincorporated business taxes issued by the Audit Division as the result of a field audit was determined properly.

FINDINGS OF FACT

1. Petitioners, Emil Panichi and Emily Panichi, timely filed New York State combined income tax returns (Form IT-208) for 1972, 1973 and 1974. Included with each filing in 1973 and 1974 was a New York State Unincorporated Business Tax Return. No unincorporated business tax return was filed for 1972.

2. On April 12, 1976, the Audit Division issued a Notice of Deficiency against petitioner Emil Panichi, imposing tax, penalty and interest as follows:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1972	\$ 2,730.15	\$436.10	\$ 612.59	\$ 3,778.84
1973	6,229.45	-0-	930.56	7,160.01
1974	<u>6,788.56</u>	<u>-0-</u>	<u>572.28</u>	<u>7,360.84</u>
TOTAL	\$15,748.16	\$436.10	\$2,115.43	\$18,299.69

The deficiency was based on a field audit which resulted in disallowance of certain deductions and in the shifting back of income from Emily Panichi to Emil Panichi. According to the Statement of Audit Changes which was issued with the Notice of Deficiency, Mr. Panichi's personal income tax was increased by \$1,653.36 for 1972, \$3,873.19 for 1973 and \$3,818.28 for 1974 and Mrs. Panichi was found to be entitled to personal income tax refunds of \$759.92 for 1973 and \$978.26 for 1974.

The statement also found Mr. Panichi liable for unincorporated business tax due of \$1,076.79 for 1972, \$2,356.26 for 1973 and \$2,970.28 for 1974 and asserted penalties totaling \$436.10 for his failure to file an unincorporated business tax return and pay unincorporated business tax for 1972.

The refunds of \$759.92 for 1973 and \$978.36 for 1974 calculated as due to Emily Panichi, plus interest of \$196.00, were applied to the deficiency issued against Emil Panichi.

3. On June 23, 1976, petitioners, Emil Panichi and Emily Panichi, timely filed a petition for a redetermination of personal income and unincorporated business taxes.

4. Since 1957 petitioner Emil Panichi has operated the Royal Carting Co. ("Royal") as a single proprietorship with offices and garage at Hopewell Junction, New York. The firm owned and operated seven trash collection trucks in Dutchess County, New York.

Petitioner Emily Panichi, the wife of petitioner Emil Panichi, received a salary of \$5,200.00 per year from Watch Hill Holding Corp. ("Watch Hill"). She was the secretary of the corporation and petitioner Emil Panichi was its president. Together, they owned all of the capital stock of Watch Hill.

5. Petitioner Emily Panichi received no salary from Royal. She allegedly served in a clerical capacity, doing billing and the like. No proof was adduced as to how much time petitioner Emily Panichi spent on duties for Royal. Watch Hill's U.S. Corporation Income Tax Returns (Form 1120) for the years at issue stated that 100 percent of Emily Panichi's time was devoted to that corporation's business.

6. Royal's offices and the garage where the company's trucks were stored, were owned by Watch Hill. While there was no formal lease or other rental agreement, Royal's books showed that it paid \$30,000.00 in rent to Watch Hill in 1972 and 1973 and \$34,000.00 in 1974. As sole owner of Royal, petitioner Emil Panichi paid Watch Hill a management fee of \$13,000.00 in 1972, \$15,600.00 in 1973 and \$20,800.00 in 1974. Petitioners did not personally appear or testify at the hearing. No explanation was forthcoming as to what services were paid for in the "management fee."

7. Petitioners, Emil Panichi and Emily Panichi, filed joint Federal income tax returns for 1972, 1973 and 1974. They attached to and made a part of the Form 1040 which they filed a Schedule "C" (Profit or Loss From Business or Profession) for each year. The net profit on the Schedules "C" and on the unincorporated business tax returns (Form IT-202) filed for 1973 and 1974 differed, as follows:

	<u>PER SCHEDULE "C"</u>	<u>PER IT-202</u>
1973	\$47,097.00	\$37,097.00
1974	51,780.74	36,780.00

8. In 1973, petitioners filed a New York State Combined Income Tax Return (Form IT-208), on which they transferred \$10,000.00 of Emil Panichi's income to his wife as "other income." In 1974, petitioners transferred \$15,000.00 in the same manner.

9. On audit, the Audit Division found that petitioner Emil Panichi had failed to report capital gain on the sale of trucks either for unincorporated business tax or personal income tax purposes. Mr. Panichi had also erroneously deducted traffic fines, and had charged to business expenses the cost of personal insurance. He conceded that these items were in error and they are not at issue.

10. The Audit Division disallowed \$15,000.00 for rental expense in both 1973 and 1974, for personal income and unincorporated business tax purposes. The auditor stated that although he was not a real estate expert, in his opinion, the rent payments were three times fair rental value. Though aware of this contention, petitioner Emil Panichi adduced evidence only to the per-square-foot rent considered reasonable by two real estate appraisers. No evidence was adduced regarding the total building area being rented, nor regarding what the rent could reasonably be for this parcel.

11. Petitioners gave no reason why an unincorporated business tax return was not filed for 1972.

CONCLUSIONS OF LAW

A. That the New York adjusted gross income of petitioners, Emil Panichi and Emily Panichi, must be determined as if their Federal adjusted gross had been determined separately (section 612(f) of the Tax Law and 20 NYCRR 116.6). The transfer of income from Emil Panichi to "other income" for Emily Panichi was contrary to the Tax Law and regulations.

B. That the \$15,000.00 per year in rent for business purposes may have been disallowed on questionable grounds; however, by failing to produce evidence to show this to be the case, petitioner Emil Panichi has failed to meet his burden of proof.

C. That the petition of Emil Panichi and Emily Panichi for redetermination of the deficiency in personal income and unincorporated business taxes for 1972, 1973 and 1974 is in all respects denied; therefore, the Notice of Deficiency issued April 12, 1976 is sustained.

DATED: Albany, New York

FEB 29 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER