

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
John Philip Scarincio :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax & UBT :
under Article 22 & 23 of the Tax Law :
for the Year 1977. :

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 14th day of November, 1980, he served the within notice of Decision by certified mail upon John Philip Scarincio, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John Philip Scarincio
158 South St.
Glens Falls, NY 12801

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
14th day of November, 1980.

Dorothy A. Bunt

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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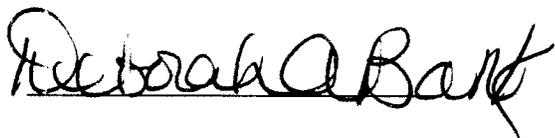
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of November, 1980, he served the within notice of Decision by certified mail upon Frank V. Williams the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

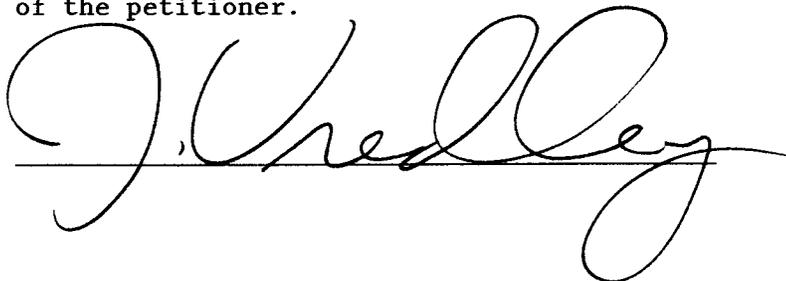
Mr. Frank V. Williams
P.O. Box 599
Glens Falls, NY 12801

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
14th day of November, 1980.





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

November 14, 1980

John Philip Scarincio
158 South St.
Glens Falls, NY 12801

Dear Mr. Scarincio:

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
Frank V. Williams
P.O. Box 599
Glens Falls, NY 12801
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JOHN PHILIP SCARINCIO
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 1977.

DECISION

Petitioner, John Philip Scarincio, 158 South Street, Glens Falls, New York 12801, 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 1977 (File No. 20166).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building No. 9, State Campus, Albany, New York, on April 23, 1979 at 9:00 A.M. Petitioner appeared by Frank V. Williams, CPA. The Audit Division appeared by Peter Crotty, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioner is liable for additional personal income tax and unincorporated business tax for 1977 pursuant to notice and demand issued under jeopardy assessment and which terminated petitioner's taxable year.

FINDINGS OF FACT

1. On August 2, 1977, the Audit Division issued a Notice and Demand for Payment of Personal and Unincorporated Business Taxes Under Jeopardy Assessment against John Philip Scarincio on the grounds that his taxable year was terminated on August 2, 1977 and tax was computed for the taxable period of January 1, 1977 to August 2, 1977, based upon available information under section 694(1) of the Tax Law. Accordingly, a Notice of Deficiency was issued on September 12,

1977 in the amount of \$21,962.50.

2. On July 30, 1977, petitioner, John Philip Scarincio, was arrested at his home by the New York State Police, at which time \$4,750.00 was seized in addition to gambling records. Since petitioner's income could not be calculated accurately from his records, the jeopardy assessment was computed on the basis that \$4,000.00 of the amount seized was one week's receipts from gambling. Receipts from gambling from January 1 to August 2, were projected at the rate of \$4,000.00 per week and petitioner's taxable year was terminated with petitioner's income from gambling computed at \$120,000.00.

3. Some of the currency and coins seized were unique and petitioner's representative persuaded the tax compliance agent to secure a safe deposit box in a local bank to deposit the currency and coins so they would not lose their unique value. The collection includes silver coins, buffalo head nickels, old pennies, banded, uncirculated \$2.00 bills, a double imprinted \$2.00 bill, some \$2.00 bills dated prior to 1963, and \$200.00 in nickels dated prior to 1956 marked as being the property of John Philip Scarincio, Jr. All the coins and bills were either part of a coin and currency collection or were marked as property belonging to John Philip Scarincio, Jr., or one Jane Wilson Munger, or others. The total face value of the collection was not listed.

4. Petitioner filed federal and state returns for 1977 in 1978 within the time requested for extension for filing, which was to August 15, 1978. A refund of \$368.00 was requested on the federal return and \$71.60 was sought in refund from the State. A loss of \$2,853.00 from illegal bookmaking was separately attached to the federal return and it was noted that pursuant to section 165(d) of the Internal Revenue Code of 1954, the loss was non-deductible. Petitioner's accountant testified that he tested the records of petitioner's activities for four randomly selected days and found them to be accurate.

5. Petitioner, who was crippled with polio from an early age, and his parents have resided in Glens Falls for many years and to the date of the hearing continued to do so.

6. Petitioner, pled guilty on October 6, 1977 to four misdemeanors and was fined \$1,000.00 for violation of section 225.15 of the Penal Law (possession of gambling records in the second degree), \$500.00 for violation of section 221.15 of the Penal Law (criminal possession of marijuana in the second degree), \$1,000.00 for violation of section 225.05 of the Penal Law (promoting gambling in the second degree), and \$500.00 for violation of section 265.01 of the Penal Law (criminal possession of a weapon in the fourth degree).

7. The Audit Division offered no basis for the figure of \$120,000.00 projected as petitioner's personal income and unincorporated business income for 1977.

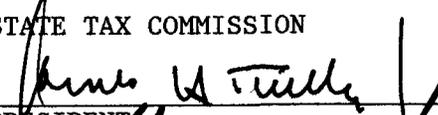
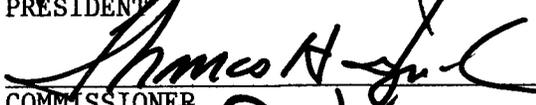
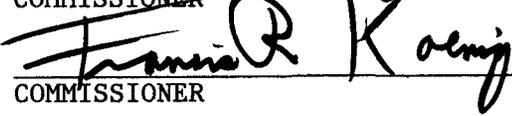
CONCLUSIONS OF LAW

A. That petitioner, John Philip Scarincio, was engaged in an illegal gambling business during the year 1977.

B. That the projection of unreported income of \$120,000.00 by the Audit Division was arbitrary and without valid basis. No income reconstruction audit (e.g. net worth; bank deposits) which could have supported such projection was performed.

C. That the petition of John Philip Scarincio is granted. The jeopardy assessment dated August 2, 1977 for personal income tax and for unincorporated business tax is vacated and the Notice of Deficiency is cancelled.

DATED: Albany, New York
NOV 14 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER