

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Giuseppe & Mary Caridi :

: AFFIDAVIT OF MAILING

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 Years 1974 and 1975.

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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Giuseppe & Mary Caridi, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

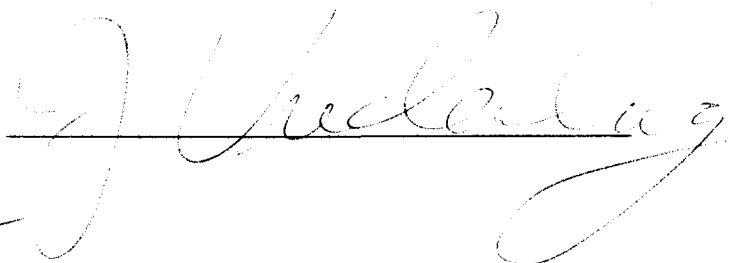
Giuseppe & Mary Caridi
225 Akron St.
Lockport, NY 14094

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
2nd day of October, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION

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of

Giuseppe & Mary Caridi :

: AFFIDAVIT OF MAILING

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 Years 1974 and 1975.

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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Peter J. Privitera the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter J. Privitera
Privitera & Company
3507 Union Rd.
Buffalo, NY 14225

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
2nd day of October, 1981.

Carrie P. Hagelund

Jay Vredenburg

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

October 2, 1981

Giuseppe & Mary Caridi
225 Akron St.
Lockport, NY 14094

Dear Mr. & Mrs. Caridi:

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,
Kathy Pfaffenbach

STATE TAX COMMISSION

cc: Petitioner's Representative
Peter J. Privitera
Privitera & Company
3507 Union Rd.
Buffalo, NY 14225
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
GIUSEPPE CARIDI and MARY CARIDI	:	DECISION
	:	
for Redetermination of Deficiencies or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of the	:	
Tax Law for the Years 1974 and 1975.	:	

Petitioners, Giuseppe Caridi and Mary Caridi, 225 Akron Street, Lockport, New York 14094, filed petitions for redetermination of a deficiency or for refund of personal and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1974 and 1975 (File Nos. 25015 and 25016).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on January 27, 1981 at 10:45 A.M. Petitioners appeared by Peter J. Privitera, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined petitioners' tax liability as a result of a field audit.

FINDINGS OF FACT

1. Petitioners, Giuseppe Caridi and Mary Caridi, filed New York State income tax resident returns for 1974 and 1975. Petitioner, Giuseppe Caridi, filed a New York State Unincorporated Business Tax Return for 1975.

2. Petitioner Giuseppe Caridi operated a grocery business since 1958. He did business under the name and style of Locust Market at 295 Locust Street, Lockport, New York.

3. On October 31, 1977, based on a field audit, the Audit Division issued two notices of deficiency. One Notice was issued against petitioner Giuseppe Caridi for 1974 and 1975, asserting additional personal income and unincorporated business taxes of \$4,339.32, plus penalties of \$495.34 [pursuant to sections 685(a)(1), 685(a)(2) and 685(b)] and interest of \$746.80. The other Notice was issued against Mary Caridi for 1974 and 1975, asserting personal income tax of \$93.25, plus interest of \$15.63.

4. The Audit Division examined the books and records of petitioner Giuseppe Caridi in accordance with established audit procedures and techniques. It utilized the source and application of funds method of reconstructing income, along with an analysis of petitioners' living expenses. The Division determined that there were discrepancies of \$21,117.17 and \$22,273.66 for 1974 and 1975 respectively.

5. Petitioners contended that in 1973 Giuseppe Caridi's brother sent them \$12,600.00. They contended that this represented part payment from the disposition of petitioner Giuseppe Caridi's interest in a fruit business located in Italy. Petitioners further contended that in 1974 petitioner Giuseppe Caridi went to Italy to conclude the business arrangement with his brother which called for a settlement of \$25,000.00 which sum was brought back to the United States in cash. Petitioners argued that the \$12,600.00 and \$25,000.00 should be considered as sources within the audit period.

6. The Audit Division estimated for a family of five the following personal living expenses:

Food and Withdrawals from business	\$3,000.00
Clothing and Miscellaneous	2,500.00
Utilities	600.00
Auto	500.00
	<u>\$6,600.00</u>

The estimate was based on an analysis of what information the Audit Division had. The petitioners contended the living expenses were arbitrary because they lived a frugal lifestyle. However, the petitioners presented no evidence as to their cost of personal living expense.

7. The petitioners further contended that during 1974 they sold a walk-in cooler, a cube steak machine, a meat grinder, an electric saw, an ice cream cooler and a compressor for approximately \$5,000.00. It is the petitioners' contention that this sale of equipment should be included in the source and application of funds statement. However, petitioners failed to submit any satisfactory documentary evidence to support their contentions.

CONCLUSIONS OF LAW

A. That petitioners have not presented adequate or supporting evidence (such as bills of sale of the business and/or equipment), to sustain their burden of proof in accordance with section 689(e) of the Tax Law and therefore have failed to establish that the notices of deficiency issued October 31, 1977 were erroneous, arbitrary or capricious.

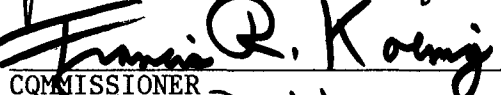
B. That the petitions of Giuseppe Caridi and Mary Caridi are denied and the notices of deficiency issued October 31, 1977 are sustained, together with such additional penalties and interest as may be lawfully owing.

DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER