

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Joseph DiPeri
and Mildred DiPeri (deceased)

:

:

:

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 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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Joseph DiPeri and Mildred DiPeri (deceased) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph DiPeri
and Mildred DiPeri (deceased)
33-19 169th St.
Flushing, NY 11358

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
19th day of June, 1981.

Garnie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph DiPeri :
and Mildred DiPeri (deceased) :

: 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 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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Jerome Silverman 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. Jerome Silverman
Zolt & Loomis
14 E. 82nd St.
New York, NY 10028

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
19th day of June, 1981.

Annie G. Hagerman

J. Vredenburg

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

June 19, 1981

Joseph DiPeri
and Mildred DiPeri (deceased)
33-19 169th St.
Flushing, NY 11358

Dear Mr. DiPeri:

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
Jerome Silverman
Zolt & Loomis
14 E. 82nd St.
New York, NY 10028
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOSEPH DI PERI and MILDRED DI PERI (DECEASED) : 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. :

Petitioners, Joseph DiPeri and Mildred DiPeri (deceased), 33-19 169th Street, Flushing, New York 11358, 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 Nos. 20466 and 20467).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 27, 1981 at 1:15 P.M. Petitioners appeared by Zolt & Loomis (Jerome Silverman, CPA). The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner, Joseph Di Peri's, taxable income from self-employment was understated for unincorporated business tax and personal income tax purposes for the subject year.

FINDINGS OF FACT

1. Petitioners, Joseph DiPeri and Mildred DiPeri (deceased), his wife, filed a New York State Resident Return (Form IT-201) for 1973. Petitioner Joseph DiPeri filed an unincorporated business return for instant year.

2. On February 23, 1977, the Tax and Finance Bureau received a consent extending period of limitaiton for assessment for 1973.

3. On September 26, 1977, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$1,593.06, five percent (5%) negligence penalty of \$79.66, plus interest of \$412.12, for a total of \$2,084.84. Under same date, the Audit Division issued a separate Notice of Deficiency against petitioner Joseph DiPeri asserting unincorporated business tax of \$684.59, five percent (5%) penalty of \$34.22, plus interest of \$177.10, for a total of \$895.95. The Notice of Deficiency for unincorporated business tax was based on a Statement of Audit Changes, issued under same date, which held that petitioner Joseph DiPeri understated his gross unincorporated business income in the amount of \$15,000.00. Such amount was, as a corollary, also understated on the personal income tax return filed by the petitioners for subject year.

4. The Audit Division's determination of additional unincorporated business tax for subject year was based on its finding that petitioner's cash purchase of a \$15,000.00 Treasury Bill was attributable to unreported business income.

5. Petitioner Joseph DiPeri contended, inter alia, that the source of the \$15,000.00 represents money saved by his deceased spouse from gifts which he made to her over a period of many years of marriage and which she kept in envelopes; some of which was kept at home and other placed in a safe deposit vault. Petitioner Joseph DiPeri also contended that his deceased spouse was able to accumulate these funds as they lived frugally; never taking vacations nor enjoying any of the other amenities of life.

Petitioner Joseph DiPeri argued that he had no knowledge as to the amount of said funds accumulated by his deceased spouse. Although he acknowledged that he was aware of the cash in the safe deposit box, he didn't keep up on it.

Petitioner Joseph DiPeri also argued that he retained cash because he neither believed in nor trusted banks. However, the personal income tax return filed by petitioners together with petitioner Joseph DiPeri's testimony indicates that for subject year they reported interest income earned from savings accounts.

6. In 1960, petitioners purchased the home in which both resided, and where petitioner Joseph DiPeri now resides alone. The purchase price for the home was \$28,000.00; of which \$18,000.00 was financed by a bank mortgage and the balance of \$10,000.00 came from "cash accumulation".

CONCLUSIONS OF LAW

A. That petitioner Joseph DiPeri has not sustained the burden of proof imposed by section 689, subdivision (e) of the Tax Law, which requires him to establish that the cash used to acquire the Treasury Bills came from previously taxed business income. The petitioner's arguments and contentions as to the source of said funds were both conflicting and ambiguous.

That the burden of proof to overcome the assessments rests upon the petitioner; and that, if there are facts or reasonable inferences to be drawn from the record to support the determination, the assessment must be confirmed. (Matter of Young v. Bragalini, 3 N.Y.2d 602, 170 N.Y.S.2d 805). Thus, it is required to confirm the determination if there are facts to sustain the determination which indicated that the assessments were not arbitrary or capricious. (People ex rel. Freebor & Co. v. Graves, 257 A.D. 587, 14 N.Y.S.2d 4; Matter of Calder v. Graves, 261 A.D. 90, 24 N.Y.S.2d 797, affd. 286 N.Y. 643).

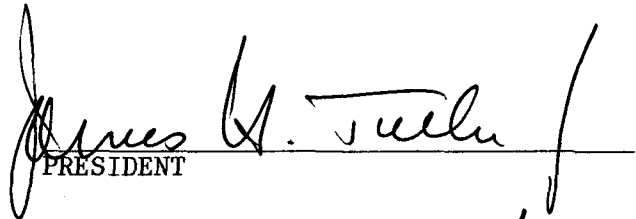
That there are facts to support the Audit Division in its findings that the purchase of Treasury Bills for cash does constitute additional unincorporated business and additional personal income.

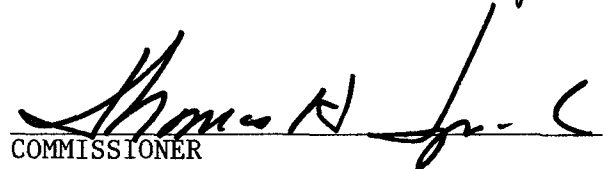
B. That the petitions of Joseph DiPeri and Mildred DiPeri (deceased), are denied and the notices of deficiency issued September 26, 1977 are sustained, together with such additional interest and penalty as may be lawfully due and owing.

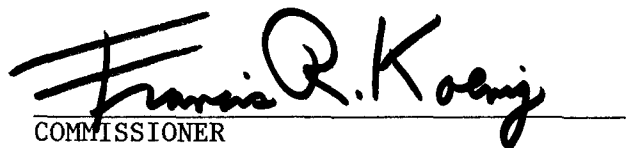
DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1981


PRESIDENT


COMMISSIONER


COMMISSIONER