

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Richard & Julia Givre :
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 Years 1972 - 1974. :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Richard & Julia Givre, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard & Julia Givre
42-45 155th St.
Flushing, NY 11355

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
20th day of February, 1981.

Connie A. Hagellund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Richard & Julia Givre :

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 Years 1972 - 1974. :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Milton Wolfsohn 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. Milton Wolfsohn
129 Broadway
Lynbrook, NY 11563

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
20th day of February, 1981.

Cornie A. Haglund

J. Vredenburg

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

February 20, 1981

Richard & Julia Givre
42-45 155th St.
Flushing, NY 11355

Dear Mr. & Mrs. Givre:

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
Milton Wolfsohn
129 Broadway
Lynbrook, NY 11563
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RICHARD GIVRE and JULIA GIVRE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1972, 1973 and 1974.	:	

Petitioners, Richard Givre and Julia Givre, 42-45 155th Street, Flushing, New York 11355, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1972, 1973 and 1974 (File No. 15158).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 16, 1980 at 1:30 P.M. Petitioners, Richard Givre and Julia Givre, appeared with Milton Wolfsohn, Public Accountant. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the cash analysis method of audit used by the Special Investigations Bureau correctly reflected the petitioners' income.

FINDINGS OF FACT

1. Petitioners, Richard Givre and Julia Givre, timely filed New York State income tax resident returns for the years 1972, 1973 and 1974.
2. On April 12, 1976, the Audit Division issued three notices of deficiency based on an audit conducted by the Special Investigations Bureau on petitioners' books and records for the years 1972, 1973 and 1974. The first deficiency was issued against petitioners, Richard Givre and Julia Givre, for the years 1972 and 1973 for \$1,374.28, plus interest of \$282.93. The other two deficiencies

were issued separately for the year 1974, against petitioner Richard Givre for \$278.39, plus interest of \$23.47, and against Julia Givre for \$331.35, plus interest of \$27.93.

3. The Special Investigations Bureau (hereinafter Bureau) increased petitioners' taxable income for the years 1972, 1973 and 1974 by utilizing the source and application method of analyzing cash. This analysis resulted in additional taxable income of \$15,826.47 for 1972, \$7,168.90 for 1973 and \$11,046.35 for 1974. Petitioners disagreed with the results of the audit and disputed certain items in the cash analysis schedule.

4. Petitioners challenged a loan repayment of \$2,283.25 shown (as an application) for the year 1974. The auditor testified that he "assumed" that a loan was repaid in cash when a monthly loan payment was not evidenced by a check. Petitioner Richard Givre testified that he was experiencing financial difficulties and that he was delinquent in the repayment of the loan. The loan was repaid by check and/or cash, but subsequent to the years at issue. In mid-May 1974, petitioners, Richard Givre and Julia Givre, declared personal bankruptcy.

5. Petitioner Julia Givre challenged the amounts shown (as a source) from unemployment benefits received during the years 1972, 1973 and 1974 of \$975.00, \$450.00 and \$1,200.00, respectively. Petitioner submitted an unemployment insurance benefit book which indicated that she received unemployment benefits of \$75.00 per week for 19 weeks in 1972, 9 weeks in 1973 and 17 weeks in 1974; or total benefits of \$1,425.00, \$675.00 and \$1,275.00, respectively.

6. Petitioner Julia Givre's parents were citizens and residents of Columbia, who were receiving a reparation pension from Germany. This money was deposited in a savings account jointly held by petitioner Julia Givre and her mother. Due to petitioners' financial difficulties, withdrawals were made

from this account for petitioners' own use during the years at issue. The Bureau's audit worksheets indicated withdrawals from this account of \$4,035.00 in 1972, \$2,550.00 in 1973 and \$5,500.00 in 1974. An affidavit submitted by petitioner Julia Givre's mother indicated that she authorized withdrawals of \$4,035.00 in 1972 \$2,150.00 in 1973 and \$5,500.00 in 1974 for petitioners' own use. These amounts were not listed (as a source) in the Bureau's cash analysis schedule.

7. Petitioner Julia Givre's parents spoke very little English, and relied upon their daughter, petitioner Julia Givre, for assistance when they were in the United States. Part of her assistance was to pay certain bills on behalf of her father. Her father would give her the cash and she in turn would deposit the money and pay the bills, by issuing checks. An affidavit, along with an itemized list and a few sample receipts were submitted which indicated that payments of \$1,738.50, \$740.77 and \$2,712.10 were made during the years 1972, 1973 and 1974, respectively, on behalf of petitioner Julia Givre's father.

8. Petitioners' challenged the "cost of living" (as an application) figures determined by the Bureau. However, no testimony or documentary evidence was submitted to show that the cost of living figures were incorrect.

CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law provides that the burden of proof is upon the petitioner in any case before the State Tax Commission. Accordingly, the petition of Richard Givre and Julia Givre is granted to the extent established by a fair preponderance of the evidence: to wit, by reducing the audit increase in taxable income of \$15,826.47 for 1972, \$7,168.90 for 1973 and \$11,046.35 for 1974 as follows:

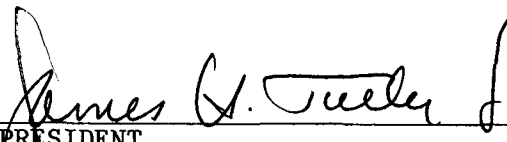
	<u>1972</u>	<u>1973</u>	<u>1974</u>
Loan Repayment	\$ -0-	\$ -0-	\$ 2,283.25
Additional Unemployment			
Insurance Benefits	450.00	225.00	75.00
Additional Withdrawals	4,035.00	2,150.00	5,500.00
Payments on behalf of father	1,738.50	740.77	2,712.10
Cost of living	-0-	-0-	-0-
Reductions Granted	<u>\$6,223.50</u>	<u>\$3,115.77</u>	<u>\$10,570.35</u>

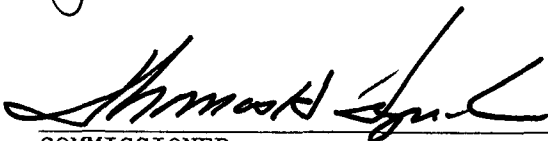
B. That the Audit Division is hereby directed to modify the three notices of deficiency issued April 12, 1976; and that except as so granted, the petition is in all other respects denied.

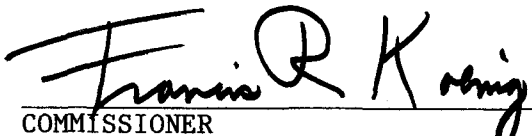
DATED: Albany, New York

STATE TAX COMMISSION

FEB 20 1981


PRESIDENT


COMMISSIONER


COMMISSIONER