

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
Barton L. Goldberg :  
and Sheila Goldberg :  
: AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
and UBT under Article 22 & 23 of the Tax Law for :  
the Years 1970, 1971, 1972 & 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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Barton L. Goldberg and Sheila Goldberg the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barton L. Goldberg  
and Sheila Goldberg  
2511 Empire St. Bldg.  
New York, NY 10001

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  
25th day of September, 1981.

*Annie P. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
Barton L. Goldberg :  
and Sheila Goldberg :  
: 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 1970, 1971, 1972 & 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 25th day of September, 1981, he served the within notice of Decision by certified mail upon George J. Liebner the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George J. Liebner  
Silberdick & Peritz  
350 Fifth Ave.  
New York, NY 10001

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  
25th day of September, 1981.

*Bernie A. Haglund*

*J. Vredenburg*

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

September 25, 1981

Barton L. Goldberg  
and Sheila Goldberg  
2511 Empire St. Bldg.  
New York, NY 10001

Dear Mr. & Mrs. Goldberg:

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  
George J. Liebner  
Silberdick & Peritz  
350 Fifth Ave.  
New York, NY 10001  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
BARTON L. GOLDBERG and SHEILA GOLDBERG	:	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 1970, 1971, 1972	:	
and 1973.	:	

---

Petitioners, Barton L. Goldberg and Sheila Goldberg, 2511 Empire State Building, New York, New York 10001, 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 1970, 1971, 1972 and 1973 (File No. 19106).

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 January 24, 1980 at 1:15 P.M. Petitioner Barton L. Goldberg appeared with George J. Liebner, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether a Notice of Deficiency was properly issued pursuant to section 681(a) of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Barton L. Goldberg and Sheila Goldberg, timely filed joint New York State income tax resident returns for the years 1970, 1971,

1972 and 1973, on which petitioner Barton L. Goldberg reported other income from his activities as a "consultant". Petitioner Barton L. Goldberg did not file unincorporated business tax returns for the years 1970, 1971, 1972 and 1973.

2. On July 16, 1976, the Audit Division issued a Statement of Audit Changes in the sum of \$4,200.96, on which;

- (a) additional personal income tax of \$436.10 was imposed for the years 1970 and 1971 due to unreported Federal audit changes. (Petitioners conceded this item and paid additional personal income tax of \$436.10 in August 1976.)
- (b) the income from petitioner's activities during 1970, 1971, 1972 and 1973 as a consultant was held subject to the unincorporated business tax.

On February 28, 1977, the Statement of Audit Changes was revised to reflect updated interest.

3. The Audit Division did not have and did not submit a Notice of Deficiency based on the aforementioned Statement of Audit Changes. Nor did the Audit Division submit evidence that a deficiency was mailed to the petitioner.

4. Although petitioners' challenged the validity of the Statement of Audit Changes, the Audit Division requested "that the Statement of Audit Changes be upheld".

5. The Audit Division did not have and did not submit the petition originally filed by petitioners for a redetermination. However, a perfected petition received January 29, 1979 was entered into evidence.

#### CONCLUSIONS OF LAW

A. That in accordance with established procedures within the Audit Division, the Statement of Audit Changes is an optional document used for the

purpose of advising taxpayers of proposed audit changes, thus providing a vehicle in which the taxpayer may accept or reject the proposed audit changes prior to the issuance of a Notice of Deficiency, or in cases where the Statement of Audit Changes is issued with the Notice of Deficiency, it becomes an information document explaining the basis of the deficiency. However, the Statement of Audit Changes is not recognized by Articles 22 and 23 of the Tax Law and cannot be utilized as a substitute for, or in lieu of, a Notice of Deficiency.

B. That the record does not contain substantial evidence that a Notice of Deficiency was issued within the meaning and intent of section 681(a) of the Tax Law.

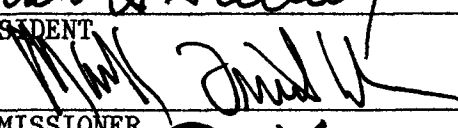
C. That the perfected petition of Barton L. Goldberg and Sheila Goldberg is granted.

DATED: Albany, New York

DEC 25 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER