

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Edward W. Golden :  
: 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 1972 - 1974

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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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Edward Golden, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward W. Golden  
Golden Acres  
Valatie, NY 12184

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  
10th day of April, 1981.

*Annice P. Heyland*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Edward W. Golden :

: 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 1972 - 1974 :

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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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Jon Rath 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. Jon Rath  
Pattison, Koskey & Lawrence, CPA's  
502 Union St.  
Hudson, NY 12534

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  
10th day of April, 1981.

*James A. Hugeland*

*J. Vredenburg*

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

April 10, 1981

Edward W. Golden  
Golden Acres  
Valatie, NY 12184

Dear Mr. Golden:

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  
Jon Rath  
Pattison, Koskey & Lawrence, CPA's  
502 Union St.  
Hudson, NY 12534  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
EDWARD W. GOLDEN : 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 1972, 1973 and 1974. :

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Petitioner, Edward W. Golden, Golden Acres, Valatie, New York, 12184, 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 1972, 1973 and 1974 (File No. 15846).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building #9, Albany, New York, on April 26, 1979 and continued on June 10, 1980. Petitioner appeared by Pattison, Koskey & Laurence, CPA's. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry Bresler, Esq., of counsel).

ISSUES

I. Whether deposits made in a savings account held jointly in the names of petitioner and his mother constituted income to petitioner and subject to personal income tax.

II. Whether rental income from petitioner's mobile home park was includable in the income from his business of selling trailers and was thus subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Edward W. Golden, filed New York State personal income tax and unincorporated business tax returns for the years 1972, 1973 and 1974.

2. On April 12, 1976, the Audit Division issued a Notice of Deficiency against petitioner for \$6,874.38 in additional personal income tax and \$2,567.20 in additional unincorporated business tax plus penalties under section 685(b) of the Tax Law (negligence) of \$472.08 and section 685(c) of the Tax Law (failure to file estimated tax returns for 1972 and 1973) of \$228.88. The deficiencies were based on an increase in business income as a result of a cash analysis and the inclusion of rental receipts for unincorporated business tax purposes.

3. The Audit Division subsequently reduced its claim and stated that the additional income was as follows:

1972	\$7,066.00
1973	3,687.00
1974	3,030.00

Petitioner disagreed with the revised findings for 1973 and 1974 in that they included deposits to a savings account in the names of petitioner and his mother which amounted to \$8,400.00 for 1973 and \$6,582.00 for 1974.

4. Petitioner operated a mobile home sales business in Valatie, New York. In addition, he owned two trailer parks from which he received rental income. His records were on a cash basis of accounting and included all receipts from the mobile home sales and the rental business. In 1972, 30 percent of the mobile homes sold by petitioner were set up in his trailer park; in 1973 the number was 40 percent and in 1974, 15 percent.

5. Petitioner, Edward W. Golden had a joint savings account together with his mother in the Hudson Savings Bank. She was elderly and had no

income other than social security. Deposits in 1973 totaled \$8,400.00 and in 1974, \$6,582.00. He reported the interest earned on his income tax returns for said years. Petitioner offered no documentary or other substantial evidence that the deposits made did not represent his own earnings for the two years.

CONCLUSIONS OF LAW

A. That section 703(e) of the Tax Law provides that the holding, leasing or managing of real property will not in and of itself, be considered the conducting of an unincorporated business. Regulation 20 NYCRR 203.13(b) (effective February 1, 1974) provides that where the holding, leasing or managing of real property relates to property used in or connected with an unincorporated business otherwise regularly carried on by an individual, any gains, profits, rents or other income from property will be includible in the individual's unincorporated business gross income. Therefore, the rental income received by petitioner from his trailer park is includible in his unincorporated business gross income for 1972, 1973 and 1974 and thus subject to unincorporated business tax.

B. That section 61(a) of the Internal Revenue Code defines gross income as all income from whatever source derived. Petitioner failed to sustain the burden of proof required to show that ownership of the bank deposits was not his. Therefore, said deposits were properly considered in the audit to be his additional income.

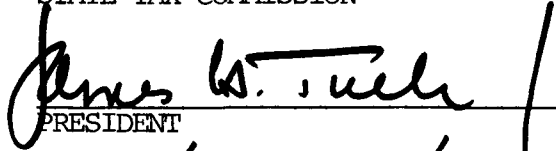
C. That the petition of Edward W. Golden is granted to the extent that the additional income is reduced as indicated in Finding of Fact "3" above. The Audit Division is hereby directed to accordingly modify the Notice of

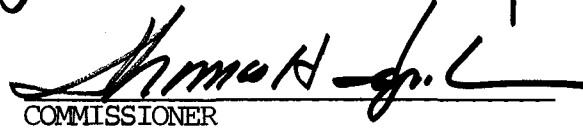
Deficiency; that except as so granted the petition is in all other respects denied.

DATED: Albany, New York

APR 10 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER