

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Alexander & Halyna Hluszko :

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 :
1968 & 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 31st day of July, 1981, he served the within notice of Decision by certified mail upon Alexander & Halyna Hluszko, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alexander & Halyna Hluszko
64-08 Alderton St.
Forest Hills, NY 11374

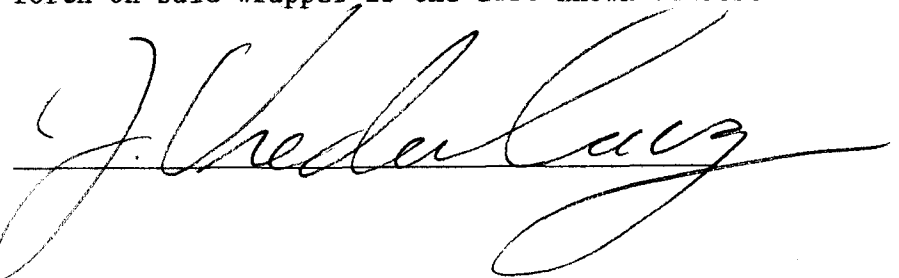
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
31st day of July, 1981.



Anna P. Hyslop



Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Alexander & Halyna Hluszko :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Tax under Article 22 of the Tax Law for the Years :
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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 31st day of July, 1981, he served the within notice of Decision by certified mail upon Denis Fedechko the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Denis Fedechko
176-69 Union Tpk.
Flushing, NY 11366

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
31st day of July, 1981.

Conrad A. Haglund

J. Vredenburg

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

July 31, 1981

Alexander & Halyna Hluszko
64-08 Alderton St.
Forest Hills, NY 11374

Dear Mr. & Mrs. Hluszko:

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
Denis Fedechko
176-69 Union Tpk.
Flushing, NY 11366
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ALEXANDER HLUSZKO and HALYNA HLUSZKO	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1968 through 1973.	:	

Petitioners, Alexander Hluszko and Halyna Hluszko, 64-08 Alderton Street, Forest Hills, New York 11374, 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 1968, 1969, 1970, 1971, 1972 and 1973 (File No. 22645).

A formal hearing was held before Stanley Buchsbaum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 1, 1980 at 9:40 A.M. Petitioners appeared by Dennis C. Fedechko, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether petitioners omitted from their New York adjusted gross income amounts properly included therein which are in excess of 25 percent of their adjusted gross income for 1968, 1969 or 1970.

II. Whether petitioners sustained their burden of proof to show that their personal living expenses, as determined by the Audit Division in reconstructing petitioners income, were erroneous.

III. Whether petitioners understatement of income was due to a fraudulent intent to evade payment of tax.

FINDINGS OF FACT

1. On April 14, 1978, the Audit Division issued a Notice of Deficiency, together with a revised Statement of Audit Changes against petitioners, Alexander and Halyna Hluszko, imposing additional personal income tax for the years 1968 through 1973. In February 1975 and in March 1976, petitioners signed consents extending the period of time within which to issue assessments for years 1968 through 1971. In February 1977, petitioners signed another consent for years 1968 through 1973. All three of these consents contained a proviso stating that years 1968, 1969 and 1970 are applicable only if petitioners omitted from their New York adjusted gross income an amount in excess of 25 percent of said income.

2. The additional tax for the six years amounted to a total of \$8,289.14, plus penalties, pursuant to section 685(e) of the Tax Law, of \$4,144.58, and interest of \$3,098.47, for a grand total of \$15,532.19. The additional tax was imposed as a result of an audit reconstructing petitioner's income by the net method. The Notice of Deficiency disclosed the following tax, penalty and interest due:

<u>Year</u>	<u>Personal Income Tax Due</u>	<u>Section 685(e) Penalty</u>	<u>Interest</u>
1968	\$ 141.94	\$ 70.97	\$ 75.94
1969	409.71	204.86	194.61
1970	1,005.20	502.60	417.16
1971	2,641.93	1,320.97	937.88
1972	3,012.32	1,506.16	1,111.50
1973	1,078.04	539.02	316.88
	<u>\$8,289.14</u>	<u>\$4,144.58</u>	<u>\$3,098.47</u>

3. Petitioners, after having spent time in concentration camps, emigrated to this country in 1951. Five years later they purchased a grocery store in Manhattan for \$3,800.00. They operated it on a corporate basis until they sold it in 1972 for \$30,500.00. Petitioners' income from this business for the

years in issue consisted of the salary drawn by petitioner Alexander Hluszko. During the years in issue his salary was: 1968 - \$5,200.00; 1969 - \$6,500.00; 1970 - \$6,500.00; 1971 - \$7,800.00; 1972 - \$3,250.00.

4. The purchaser of the store upon its sale by petitioners in 1972, a man named Diakun, agreed to pay petitioners \$30,500.00. He borrowed \$25,000.00 from petitioners under an agreement to repay the loan in installments, with interest.

5. In 1958, petitioner Halyna Hluszko was given funds by a wealthy brother when he visited her from Brazil. In 1959 she visited Brazil after his death and another brother who lived there gave her additional funds from himself and the deceased brother. She brought this money back to the United States. The entire amount was first kept in a safe at the store and then, after petitioners bought a home, it was kept in a safe in the cellar of their home. Some time after she received the money she began depositing portions of it in the bank. The Audit Division took said gifts into consideration when they determined the net worth as of December 31, 1967.

6. Petitioners loaned \$3,600.00 to Peter A. Solowij. A final payment on this loan of \$715.00 was made by Mr. Solowij on October 12, 1971. There is no basis in the record for determining when this loan was made or when the earlier portions of the repayment occurred.

7. Petitioner Halyna Hluszko received a gift of \$1,000.00 in 1972 from her sister. Said amount was paid to petitioner's sister by an insurance company on the death of her husband.

8. Petitioners received Social Security payments in 1972 of \$1,878.00 and in 1973 of \$3,261.60.

9. Petitioner Halyna Hluszko's sister gave Halyna her Social Security checks as a gift. The record shows such gifts to the extent of \$911.20 during 1973.

10. In 1973, petitioners received a Federal income tax refund of \$3,915.01 based on their income tax return for 1972.

11. Petitioners lived very frugally during the years at issue and for years prior thereto.

12. The reasonable amount to be attributed for purchase of food by petitioners in 1973 is \$2,080.00.

13. The reasonable amount to be attributed for purchase of drugs and miscellaneous is \$100.00 a year for each year, 1968 through 1973.

14. The reasonable amount to be attributed for recreation is zero for each year, 1968 through 1973.

15. The reasonable amount to be attributed for magazines and newspapers is \$10.00 for each year, 1968 through 1973.

16. The reasonable amount to be attributed for "personal" (such things as eating out) is \$25.00 a year for each year, 1968 through 1973.

17. That the Audit Division, after determining petitioners' 1972 increase in net worth, failed to remove the net nontaxable portion of the reported long term capital gain in arriving at corrected total New York Income.

CONCLUSIONS OF LAW

A. That the Audit Division failed to sustain the burden of proof imposed on it by section 689(e) of the Tax Law to show that the understatement of income for years 1968 through 1973 was due to petitioners' fraudulent intent to evade the payment of tax within the meaning and intent of section 685(e) of the Tax Law. Therefore, the fraud penalty is cancelled.

B. That after consideration of Findings of Fact 6 through 17 inclusive, petitioners corrected New York Taxable income is recomputed to be as follows:

<u>YEAR</u>	<u>REVISED TAXABLE INCOME</u>
1968	\$ 6,886.00
1969	11,223.00
1970	17,690.00
1971	29,705.00
1972	26,494.00
1973	7,069.00

C. That for each of the years at issue there exists, after consideration of Findings of Fact 6 through 17 inclusive, an omission of twenty-five percent of the amount of New York adjusted gross income reported on the return for the respective year.

D. (i) That in general, assessment of tax may be made at any time within three years after a return is filed [Tax Law section 683(a)].

(ii) That assessment of tax may be made at any time within six years after a return is filed if an individual omits from New York adjusted gross income an amount properly includible therein which is in excess of twenty-five percent of the amount of New York adjusted gross income stated in the return [Tax Law section 683(d)].

(iii) That the time limits prescribed for assessment of tax under section 683 may be extended provided that such agreement and subsequent extensions are in writing and are executed prior to the expiration of the previous period [Tax Law section 683(c)(2)].

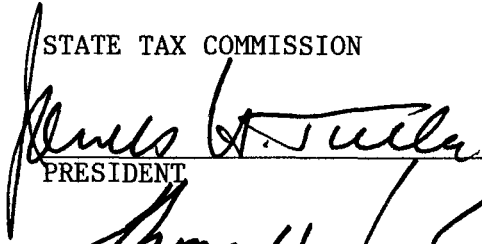
Accordingly that portion of the deficiency issued with respect to 1968, 1969 and 1970 was timely.

E. That the Audit Division is directed to recompute the Notice of Deficiency issued April 14, 1978 in accordance with Conclusions of Law "A" and "B". The deficiency as modified is sustained together with such interest as may be lawfully due.

DATED: Albany, New York

JUL 31 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER