

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Burton N. Pugach :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 16 of the Tax Law for the Year :
1959.

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 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Burton N. Pugach, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Burton N. Pugach
98-01 - 67th Ave.
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
23rd day of October, 1981.

Grace A. Huganand

J. Vredenburg

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

October 23, 1981

Burton N. Pugach
98-01 - 67th Ave.
Forest Hills, NY 11374

Dear Mr. Pugach:

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) 375 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 90 Days 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

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
BURTON N. PUGACH : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
16 of the Tax Law for the Year 1959. :

Petitioner, Burton N. Pugach, 98-01 67th Avenue, Forest Hills, New York 11374, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 16 of the Tax Law for the year 1959 (File No. 00021).

A formal hearing was commenced before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 23, 1977, at 9:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel). The hearing was continued before the same hearing officer at the same location on October 20, 1978, at 2:45 P.M. Petitioner again appeared pro se and the Audit Division appeared by Peter Crotty, Esq. (Robert N. Felix, Esq., of counsel).

ISSUES

I. Whether petitioner was assessed by the State of New York for additional personal income tax for 1959 in a timely manner as defined in Section 373.1 of the Tax Law.

II. Whether petitioner's taxable income as reported on his federal return for 1959 was changed or corrected by the United States.

6. Petitioner, upon his release from prison, filed an application for a formal hearing before the State Tax Commission to contest the 1959 assessment. At the original hearing, petitioner asserted that he was challenging the federal audit and that the results of that challenge were not yet available. Petitioner was granted an adjournment to gather evidence concerning his 1959 tax liability.

7. Petitioner sustained his burden of proof that 37 bank deposits of \$165.00 each, a total of \$6,105.00 were not unexplained income, but transfers to savings.

8. Petitioner's testimony that the \$9,920.00 of unexplained income from Martin Thuna was picked up by the federal auditors from his checkbook, but that his bank statement, which petitioner did not show to the federal auditors, would have shown a returned or bounced check in that amount is not credible, hence, as to that item petitioner has not sustained his burden of proof.

9. Petitioner's testimony that the \$4,906.95 of otherwise unexplained income from Fisher Cooper was a return on an investment which represented a return of capital on an unsubstantiated investment is not credible, hence, as to that item petitioner has not sustained his burden of proof.

10. Petitioner's testimony that the unexplained income labelled "General Motors Building \$835.35" was income not subject to tax is an unsupported conclusion of law, hence, petitioner has not sustained his burden of proof as to that item.

11. Petitioner's testimony concerning "Beacon Building \$1,500.00" and "Fairfax Building \$183.32", "All-State Building \$416.32", and "Engineer Building \$387.00" is wholly lacking in substance, hence, as to those items petitioner has not met his burden of proof.

12. Petitioner's testimony as to "Barlo International \$3,890.00", "Thuna \$1,180.00 and "Katz \$275.00" fails to sustain his burden of proof thereon for the reason given in Fact Finding 9.

13. Petitioner failed to adduce any evidence concerning contributions of \$450.00; Interest of, \$1,904.84; Taxes of, \$743.62; and dividends of, \$58.20, and hence as to those items petitioner has not sustained his burden of proof to show an amount different than found by the Federal audit.

14. Petitioner's testimony concerning business auto expenses of \$2,258.87 is wholly lacking in substance, hence, as to that item petitioner has not met his burden of proof to an amount greater than that allowed by the I.R.S.

15. Petitioner's testimony concerning \$2,993.96 in otherwise unidentified deposits, is so general and so lacking in cogency as to be unsubstantial, hence, insufficient to meet petitioner's burden of proof that they were not taxable income.

16. No issue of fraud has been raised at any stage of the matters herein involved.

17. Petitioner's testimony concerning his investment losses and bad debts is so general and so lacking in cogency as to be insubstantial. The largest bad debt, for \$33,000.00, was evidently assigned to his former wife before 1959, so that any possible but unproved loss for that item would not have been petitioner's loss in any event.

18. Petitioner's testimony concerning the deductibility of legal fees is too general to be convincing, hence, as to his deductions therefor, petitioner has failed to sustain his burden of proof as to their deductibility.

19. In the face of the statement in Exhibit 6, the federal audit report, that for 1959 petitioner's taxable income disclosed by return was \$998.39,

petitioner's statement that for 1959 he "had reported both Federally and Statewise and paid Federal and State income taxes on about \$50,000.00, somewhere around there, approximately", is so inherently incredible as to mark petitioner as a witness largely unworthy of belief.

20. On November 28, 1978, petitioner wrote to the Hearing Officer at the offices of the State Tax Commission where the hearings were held to report that "by letter dated November 13, 1978, the Internal Revenue Service agreed to accept a substantially lesser sum than assessed." This settlement was due to a compromise and not to any change or correction by any federal authority in petitioner's taxable federal income for 1959.

CONCLUSIONS OF LAW

A. There being no fraud asserted, the burden of persuasion in this proceeding was upon petitioner.

B. That petitioner was assessed within the time provided by Section 373.1 of the Tax Law.

C. That petitioner's taxable income as reported on his federal return for 1959 was both changed and corrected by the United States.

D. That the acceptance by the United States of a compromise for a lesser sum than that assessed as a result of a federal audit adjustment of taxable federal income for 1959 does not represent a change in the underlying federal audit adjustment.

E. That except for the \$6,105.00 after which petitioner met his burden of proof that the federal changes or corrections were erroneous, petitioner has not sustained his burden of proof that any of the other federal audit adjustments were erroneous.

F. That petitioner's incarceration did not make his failure to pay all of his 1959 personal income tax when due involuntary within the meaning of section 376 of the Tax Law.

G. That the petition of Burton N. Pugach is, except as to the \$6,105.00 detailed in Fact Finding 7, denied.

DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER