

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Giancarlo & Joan A. Acquarelli :

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 :  
1975 & 1976. :

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 6th day of October, 1982, he served the within notice of Decision by certified mail upon Giancarlo & Joan A. Acquarelli, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Giancarlo & Joan A. Acquarelli  
601 N. McKinley Ave.  
Endicott, NY

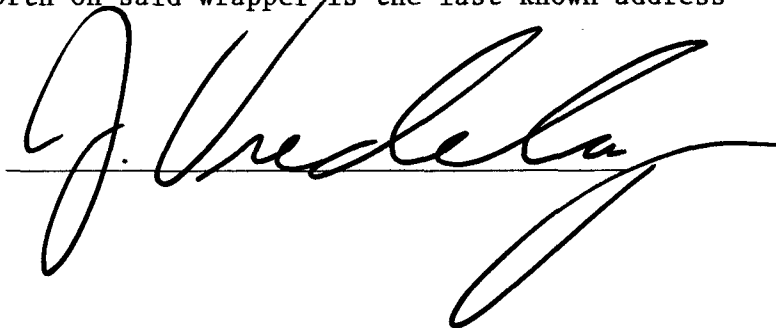
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
6th day of October, 1982.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
Giancarlo & Joan A. Acquarelli :

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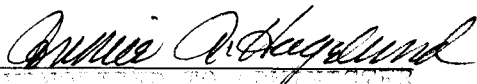
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Peter A. Daniels the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

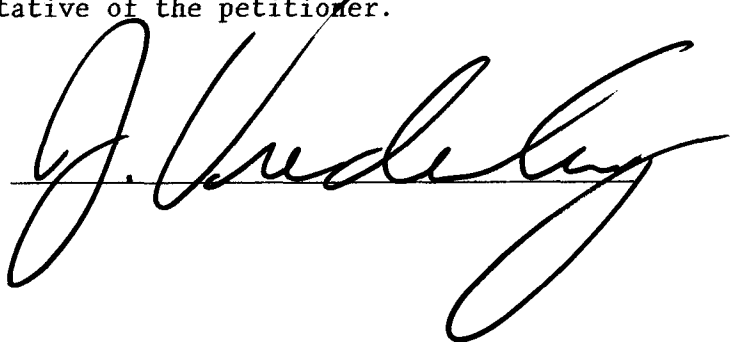
Peter A. Daniels  
306 Security Mutual Bldg.  
Endicott, NY 13901

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  
6th day of October, 1982.

  
COMMISSIONER OF TAXATION AND FINANCE  
OFFICE OF THE COMMISSIONER  
SECTION 174



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

October 6, 1982

Giancarlo & Joan A. Acquarelli  
601 N. McKinley Ave.  
Endicott, NY

Dear Mr. & Mrs. Acquarelli:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Peter A. Daniels  
306 Security Mutual Bldg.  
Endicott, NY 13901  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
GIANCARLO ACQUARELLI AND JOAN A. ACQUARELLI	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1975 and 1976.	:	

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Petitioners, Giancarlo Acquarelli and Joan A. Acquarelli, 601 North McKinley Avenue, Endicott, New York 13904, 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 1975 and 1976 (File No. 25548).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York, on September 22, 1981 at 1:15 P.M. Petitioner Giancarlo Acquarelli appeared with Peter A. Daniels, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined petitioners' tax liability for 1975 and 1976 as the result of a field audit.

II. Whether the Notice of Deficiency should be dismissed on the grounds of laches.

FINDINGS OF FACT

1. Petitioners, Giancarlo Acquarelli and Joan A. Acquarelli, on August 17, 1976 filed a joint New York State Income Tax Resident Return for 1975 along

with an Application for Extension of Time to File. Petitioner Giancarlo Acquarelli filed a New York State Unincorporated Business Tax Return for 1975.

2. Petitioner Giancarlo Acquarelli on August 16, 1977 filed a single New York State Income Tax Resident Return for 1976 along with an Application for Extension of Time to File. He filed a New York State Unincorporated Business Tax Return for 1976.

3. As the result of an audit, on May 29, 1978, the Audit Division issued a Statement of Audit Changes to petitioners for 1975 and 1976 proposing additional personal income tax of \$2,024.61. On that same date, the Audit Division issued a Statement of Audit Changes against petitioner Giancarlo Acquarelli for 1975 and 1976 proposing additional unincorporated business tax of \$1,223.35. These audit changes were based on the Audit Division's utilization of a source and application of funds method of reconstructing income along with a bank analysis and cost of living analysis. Based on this audit, the Audit Division found unreported income of \$15,638.44 and \$11,789.28 for 1975 and 1976 respectively. Accordingly, a Notice of Deficiency was issued against petitioners, Giancarlo Acquarelli and Joan A. Acquarelli, on November 13, 1978 asserting additional personal income tax for 1975 and 1976 in the amount of \$2,024.61, plus interest of \$343.19 for a total due of \$2,367.80. At the hearing, there was no evidence adduced that a Notice of Deficiency was issued for the unincorporated business tax portion of the audit, therefore this portion of the audit is not being considered at this time.

4. Petitioner Giancarlo Acquarelli operated an auto service station in Binghamton, New York.

5. At the hearing, petitioner Giancarlo Acquarelli, contended that the Audit Division failed to consider the following sources of income:

- (a) Proceeds from the sale of a his share of a poultry farm in Rome, Italy to his brother in 1971.
- (b) Proceeds of \$5,000.00 from the sale of five acres of land in Green, New York in 1976.

He contended that these moneys were at his home and used over the years at issue. Petitioner offered no documentary evidence to support his contention.

6. Petitioner asserted that the State Tax Commission be barred from proceeding with this matter because of the inordinate amount of time which has lapsed since the filing of a petition.

#### CONCLUSIONS OF LAW

A. That petitioner Giancarlo Acquarelli failed to sustain the burden of proof imposed by section 689(e) of the Tax Law which requires him to establish that the Notice of Deficiency issued on November 13, 1978 was erroneous, arbitrary or capricious.

B. That petitioner Joan A. Acquarelli was not a participant in the filing of the 1976 personal income tax return; accordingly, her name is to be deleted from that portion of the Notice of Deficiency.

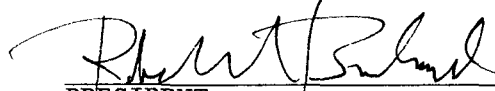
C. That the State Tax Commission is not estopped from making a claim against the petitioner. A state agency or body cannot be estopped from asserting its governmental power regarding acts within its governmental capacity. That the record in the instant case shows no undue delay by the State Tax Commission in instituting action, therefore, the remedy of laches claimed by petitioner is unfounded.

D. That except as is provided in Conclusion of Law "B", the petition of Giancarlo Acquarelli and Joan A. Acquarelli is denied and the Notice of Deficiency issued on November 13, 1978 is sustained, together with such additional interest as may be lawfully owing.

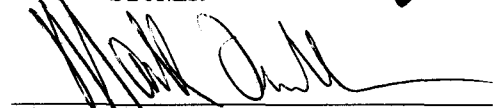
DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER