

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Sol Bogarsky : 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 Year :
1977.

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 April, 1982, he served the within notice of Decision by certified mail upon Estate of Sol Bogarsky, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

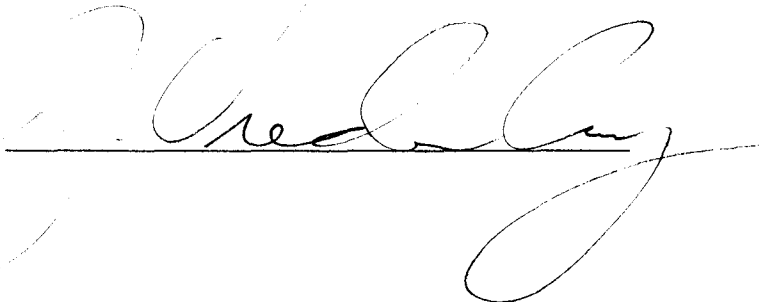
Estate of Sol Bogarsky
c/o Sam Bogarsky
1142 Bay 25th St.
Far Rockaway, NY 11691

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 April, 1982.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Estate of Sol Bogarsky

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income
Taxes under Article 22 of the Tax Law for the Year:
1977.

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 April, 1982, he served the within notice of Decision by certified mail upon Robert M. Spilky the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

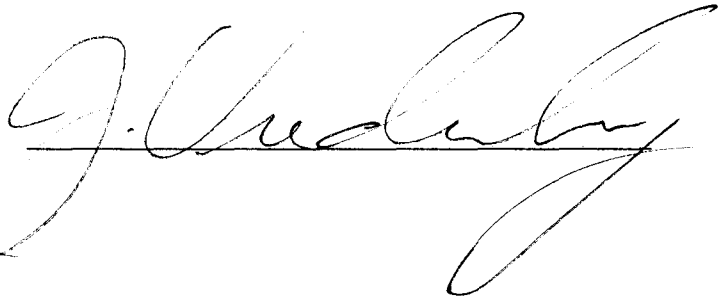
Robert M. Spilky
150 Broadway
New York, NY 10038

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
23rd day of April, 1982.





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

April 23, 1982

Estate of Sol Bogarsky
c/o Sam Bogarsky
1142 Bay 25th St.
Far Rockaway, NY 11691

Dear Mr. Bogarsky:

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
Robert M. Spilky
150 Broadway
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
ESTATE OF SOL BOGARSKY
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1977.

DECISION

Petitioner, Estate of Sol Bogarsky, c/o Abraham H. Spilky & Robert M. Spilky, Esqs., 150 Broadway, New York, New York 10038, filed a petition for a redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1977 (File No. 25115).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 14, 1981 at 1:45 P.M. Petitioner appeared by Abraham H. Spilky & Robert M. Spilky, Esqs., (Robert M. Spilky, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq., (Samuel J. Freund, Esq., of counsel).

ISSUE

Whether the cash found in decedent Sol Bogarsky's safe deposit boxes represented unreported income for the year 1977.

FINDINGS OF FACT

1. Sol Bogarsky, the decedent, herein, died January 3, 1977. He was a retired clothes presser, having retired from Crawford clothes in the late nineteen sixties. At the time of his death he was in his seventies and suffering with a heart condition. His wife died in about 1969. She was an

upholsterer. They immigrated to the United States from Europe in the nineteen-twenties. In Europe he worked as a cobbler, performing the craft by hand.

2. In approximately 1975 decedent was placed in a nursing home and except for the time he spent in the hospital, he remained in the home until his death. The cost for the home was paid for by the New York City Department of Social Services.

3. Decedent's application for admission to the nursing home and for the city to pay for same was prepared by his nephew, Sam Bogarsky, now Administrator of his estate. On the application it was asserted that decedent did not have any assets while in fact he did have assets.

4. Decedent at the time of his death had four bank accounts. They were as follows:

- | | |
|---|-------------|
| a) Central Savings Bank
4th Avnue & 14th Street
New York, New York | \$10,050.02 |
| b) East Brooklyn Savings & Loan Association
1111 Pennsylvania Avenue
Brooklyn, New York | \$ 5,701.94 |
| c) Williamsburgh Saving Bank
New Lots and Pennsylvania Avenue
Brooklyn, New York | \$ 47.63 |
| d) The Chase Manhattan Bank
975 Pennsylvania Avenue
Brooklyn, New York | \$16,039.85 |

5. Prior to decedent's death, the last transactions on the several bank accounts other than the crediting of interest were as follows:

- a) Central Savings Bank
September 1, 1973, \$500.00 withdrawal
- b) East Brooklyn Savings & Loan Association
May 24, 1973, \$300.00 withdrawal
- c) Williamsburgh Savings Bank
May 17, 1974, \$9.63 withdrawal

- d) The Chase Manhattan Bank
May 15, 1973, \$500.00 withdrawal

6. Decedent at the time of his death also had \$7,660.38 in U.S. Series "E" Bonds. The last two were purchased in November, 1961.

7. On January 27, 1977, on the application of Sam Bogarsky, Administrator of petitioner's estate, \$42,182.00 in cash was found in safe deposit boxes.

The Audit Division deemed the cash find to be unreported income.

8. The findings were as follows:

a) Chase Manhattan Bank 975 Cozine Avenue Brooklyn, New York	\$ 5,680.00
b) Williamsburg Savings Bank 1330 Pennsylvania Avenue Brooklyn, New York	\$ 6,200.00
c) Williamsburgh Savings Bank 1330 Pennsylvania Avenue Brooklyn, New York	\$ 230.00
d) Manufacturers - Hanover Trust Co. 2084 Linden Boulevard Brooklyn, New York	\$30,072.00
TOTAL	<u>\$42,182.00</u>

9. Manufacturers - Hanover Trust Co. did not maintain records of box holders' visits to safe deposit boxes.

10. Williamsburgh Savings Bank reported on June 28, 1978 that decedent did not visit either of the two boxes with that bank "during the past six years".

11. Chase Manhattan Bank reported that decedent last visited his safe deposit box with said bank on November 12, 1973.

12. On April 4, 1978 the Audit Division issued a Statement of Audit Changes against petitioner imposing additional New York City and New York State

Personal Income Taxes for the year 1977. The asserted deficiency is as follows:

a) New York State	\$4,142.30
b) New York City	<u>1,271.93</u>
	<u>\$5,414.23</u>

13. The Notice of Deficiency was issued October 13, 1978.

14. Decedent and his wife lived frugally. Vacations consisted only of visiting his brothers, one of whom had a farm in the Catskill Mountains, New York. If decedent gave a gift, it was the cheapest one he could find. He repaired his own shoes. In his family, decedent was known as an extremely thrifty individual who would save money by any means. He did not own an automobile, nor did he spend money for entertainment, nor did he spend much money for clothes or shelter.

15. The Social Security Administration reported that it did not post any earnings for decedent for the years 1970 through 1977.

16. The decedent's Administrator contended that the cash at issue consisted of previously reported income and represented some of his lifetime savings. Furthermore, he contended the Audit Division's position that said cash represented income derived during the year 1977 was totally arbitrary.

CONCLUSION OF LAW

A. That since the taxpayer was deceased, the Administrator submitted the best evidence available to him as to the source of the cash in the several safe deposit boxes. The evidence leads to the strong inference that the decedent had, as contended, saved the cash at issue over his lifetime.

B. That January 1, 1977 was a Saturday and a holiday and that January 2, 1977 was a Sunday; the banks being closed on both days, and that on January 3,

1977 decedent died in a nursing home. Accordingly he could not have deposited the money in the safe deposit boxes in 1977.

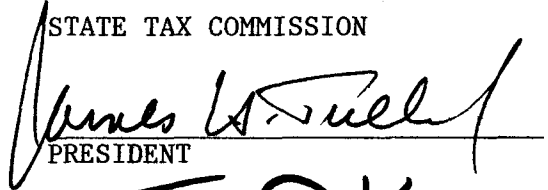
C. That since the evidence reflects that the Audit Division had no basis, in fact, for asserting the deficiency other than that the cash was found, leads to the conclusion that a deficiency for 1977 was in fact arbitrary and capricious.

D. That the petition, herein, is granted and that the Notice of Deficiency is cancelled.

DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER