

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Anthony & Joanne Campoli :

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 1974 - 1976. :

State of New York  
County of Albany

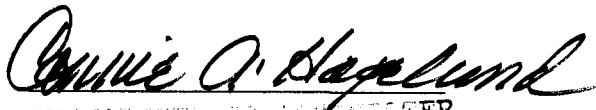
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of September, 1982, he served the within notice of Decision by certified mail upon Anthony & Joanne Campoli, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony & Joanne Campoli  
43 Wildway  
Bronxville, NY 10708

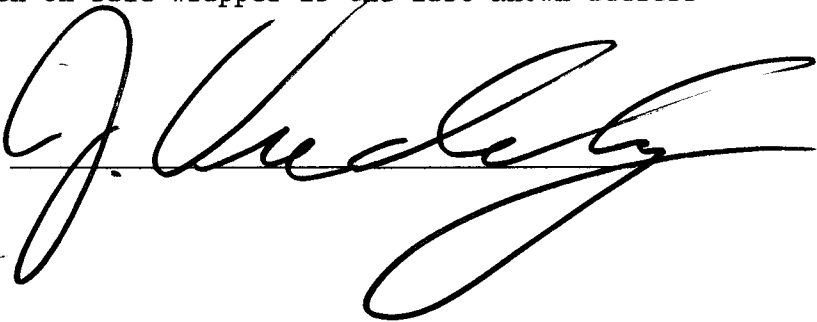
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
8th day of September, 1982.



AUTHORITY TO ADMINISTER  
OATHS AND TO TAX LAW  
SECTION 11



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Anthony & Joanne Campoli

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 1974 - 1976. :

State of New York  
County of Albany

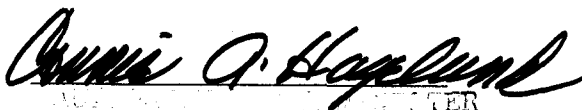
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of September, 1982, he served the within notice of Decision by certified mail upon Anthony Bellettieri the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony Bellettieri  
59 Byron Ave.  
Yonkers, NY 10704

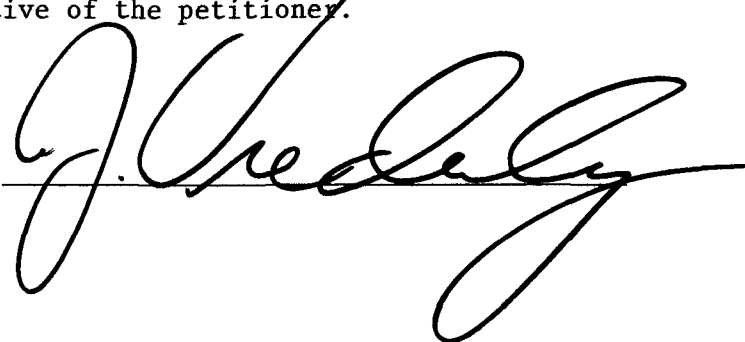
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
8th day of September, 1982.



JAMES A. HAGLUND  
NOTARY PUBLIC  
STATE OF NEW YORK  
TAX LAW



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

September 8, 1982

Anthony & Joanne Campoli  
43 Wildway  
Bronxville, NY 10708

Dear Mr. & Mrs. Campoli:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Anthony Bellettieri  
59 Byron Ave.  
Yonkers, NY 10704  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ANTHONY AND JOANNA CAMPOLI : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax and Unincorporated :  
Business Tax under Articles 22 and 23 of the :  
Tax Law for the Years 1974, 1975 and 1976.

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Petitioners, Anthony and Joanna Campoli, 43 Wildway, Bronxville, New York 10708, filed a petition for redetermination of a deficiency or for refund of personal income tax and unincorporated business tax under Articles 22 and 23 of the Tax Law for the years 1974, 1975 and 1976 (File Nos. 25392, 25393 and 25394).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 29, 1981 at 2:45 P.M. Petitioners appeared by Anthony Bellettieri, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined petitioners' personal income tax and unincorporated business tax liability for the years at issue.

II. Whether petitioners' failure to file personal income tax and unincorporated business tax returns for the years at issue was due to reasonable cause and not willful neglect.

FINDINGS OF FACT

1. On March 5, 1979, the Audit Division issued to petitioners, Anthony and Joanna Campoli, a Notice of Deficiency asserting personal income taxes due

for the year 1974 in the amount of \$3,065.00, plus penalties and interest of \$2,422.01. On the same date, the Audit Division issued to petitioner Anthony Campoli a Notice of Deficiency asserting unincorporated business taxes due for 1974 in the sum of \$1,100.00, plus penalties and interest of \$869.24.

On May 18, 1979, the Audit Division issued to petitioners a Notice of Deficiency asserting personal income taxes and unincorporated business taxes due for the years 1975 and 1976, plus penalties and interest, scheduled as follows:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1975	\$ 5,285.37	\$2,510.54	\$1,388.36	\$ 9,184.27
1976	6,329.12	2,626.58	1,124.55	10,080.25
	<u>\$11,614.49</u>	<u>\$5,137.12</u>	<u>\$2,512.91</u>	<u>\$19,264.52</u>

All the above-mentioned deficiencies were estimated due to petitioners' failure to file personal income or unincorporated business income tax returns for the years at issue. Penalties were asserted under sections 685(a)(1) and (2) and 722 of the Tax Law for failure to file returns and to pay the tax required to be shown thereon.

2. The estimated tax liabilities were based upon returns timely filed by petitioners for 1972 and 1973. Petitioners' New York adjusted gross income for 1972 and 1973 was \$27,657.78 and \$27,755.28, respectively. The Audit Division estimated petitioners' adjusted gross income as \$35,000.00 for 1974, \$40,000.00 for 1975 and \$45,000.00 for 1976. Mr. Campoli's business income for 1972 and 1973 was \$27,467.95 and \$26,621.40, respectively. The Audit Division estimated his business income as \$30,000.00 for 1974, \$35,000.00 for 1975 and \$40,000.00 for 1976.

3. Mr. Campoli is engaged in the business of building and masonry contracting and also owns a parcel of residential rental property.

4. For approximately 20 years, Mr. Campoli retained the services of Joseph Wilhelm, CPA to manage all the Campolis' business and personal financial matters, including the filing of all necessary tax returns.

5. All business income was deposited to and all business expenses paid from Mr. Campoli's checking account. At the end of each month, Mr. Campoli submitted his checking account statements and any closing statements for houses sold to Mr. Wilhelm.

6. Sometime in 1974 Mr. Wilhelm took ill with cancer and thereafter underwent several major operations. During the years at issue, Mr. Campoli delivered all his financial statements and records to Mr. Wilhelm's residence because of the accountant's illness.

Mr. Campoli also signed checks which Wilhelm had prepared for payment of various business expenses and occasionally signed blank checks on his account for such purposes. After reviewing the monthly checking account statements, Mr. Wilhelm completed Mr. Campoli's account register with the payee's name and amount.

7. Mr. Wilhelm had the responsibility of filing the Campoli's personal income tax returns and Mr. Campoli's unincorporated business tax returns. Petitioners believed that Wilhelm properly and timely filed all necessary Federal and state returns.

8. All the Campolis' financial and tax records were retained by Mr. Wilhelm. In 1977, when it came to petitioners' attention that Wilhelm had not filed their returns for 1974, 1975 and 1976, they attempted, without success, to re-secure all their records.

In August, 1978, they retained Mr. William Toscani as their accountant. Mr. Toscani also attempted to obtain the Campolis' records from Wilhelm and was

finally successful in getting some checking account statements, worksheets from January 1, 1974 through July 3, 1975, and two copies of Federal and state tax returns for 1974, 1975 and 1976, one copy intended for petitioners and one copy for filing.

9. The copies of returns intended for petitioners and those intended for filing did not match. All returns contained numerous arithmetical errors. However, for the most part, the available worksheets corresponded with the returns. Mr. Toscani was able to substantiate income items but was unable to do so for expense items due to the unavailability of any cancelled checks. It was his best judgment that, assuming the estimated tax payments claimed on the returns had in fact been made, the Campolis' total New York tax liability for the three years at issue totalled approximately \$6,000.00 to \$7,000.00.

10. Petitioners' New York personal income tax returns prepared by Wilhelm for the years 1974, 1975 and 1976 reflect payments on their estimated tax account in the respective amounts of \$2,700.00, \$2,400.00 and \$1,500.00. Department of Taxation and Finance records confirm the \$1,500.00 payment for 1976; Department records for the prior years were unavailable.

Internal Revenue Service records confirmed payments made by petitioners on their Federal estimated tax account for 1974 through 1976, as claimed on the Federal returns prepared by Mr. Wilhelm.

#### CONCLUSIONS OF LAW

A. That subdivision (a) of section 681 of the Tax Law authorizes the State Tax Commission, in the event a taxpayer fails to file a return as required under Article 22, to estimate the taxpayer's taxable income and tax liability, from such information as the Commission has in its possession. Section 681 is made applicable to Article 23 by section 722.

B. That petitioners neglected to file returns under Articles 22 and 23 for 1974, 1975 and 1976, and are unable, even now, to compute their taxable income and taxes due, by reason of the loss of most of their financial records. The Audit Division therefore properly determined, by estimation, petitioners' personal income tax and unincorporated business tax liability.

C. That petitioners are to be given credit for payments made on their estimated tax account. Department records corroborate a payment of \$1,500.00 for 1976, and it may reasonably be inferred that payments of \$2,700.00 and \$2,400.00 were made in 1974 and 1975, respectively, as claimed on the returns prepared but not filed.

D. That paragraphs (1) and (2) of subdivision (a) of section 685 levy penalties for failure to file personal income tax returns and to pay the amounts shown or required to be shown thereon in a timely manner, unless "such failure is due to reasonable cause and not due to willful neglect." Section 685 is made applicable to Article 23 by section 722.

E. That petitioners have established reasonable cause for their failure to timely file returns and pay taxes. In addition, Mr. Campoli has acted in good faith throughout this proceeding, and petitioners have endeavored to obtain competent advice with regard to their personal and business financial matters. Consequently, the penalties asserted under section 685(a) are cancelled.

F. That the petition of Anthony and Joanna Campoli is granted to the extent indicated in Conclusions of Law "C" and "E"; that the notices of deficiency



issued March 5, 1979 and May 18, 1979 are to be modified accordingly; and that except as so modified, the deficiencies are in all other respects sustained.

DATED: Albany, New York

SEP 08 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

CLAIM CHECK  
NO.

☐ HOLD

DATE

9/17

1ST NOTICE

Anthony & Joanne Campoli  
43 Willdway  
Bronxville, NY 10708

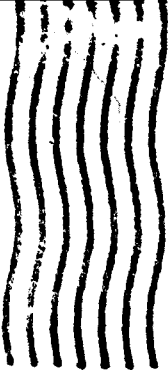
*[Signature]*

9/30

Detached from  
PS Form 3849-A  
Oct. 1980

CERTIFIED

P 230 842 77



UNRECORDED

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

September 8, 1982

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43 Wildway  
Bronxville, NY 10708

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Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Anthony Bellettieri  
59 Byron Ave.  
Yonkers, NY 10704  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
ANTHONY AND JOANNA CAMPOLI : DECISION  
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DATED: Albany, New York

SEP 08 1982

STATE TAX COMMISSION

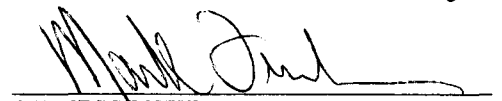
ACTING

PRESIDENT

  
\_\_\_\_\_

  
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COMMISSIONER

  
\_\_\_\_\_

COMMISSIONER