

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Barney & Helen Gadziala :

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 1973, 1974, 1975. :

State of New York
County of Albany

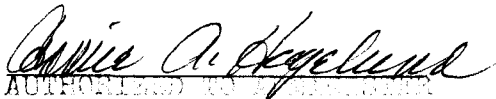
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Barney & Helen Gadziala, the petitioners in the within proceeding,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

Barney & Helen Gadziala
R.D. Harts Hill
Whitesboro, NY 13492

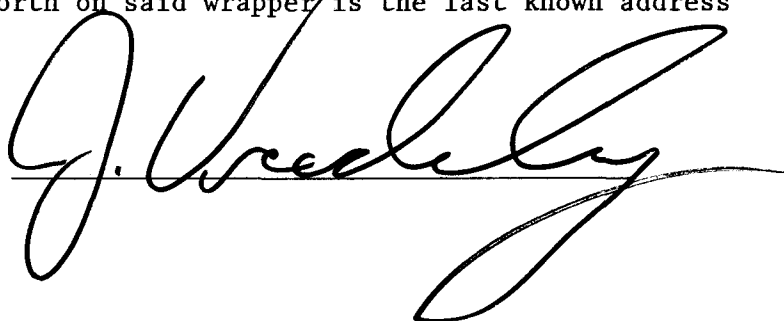
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
ALBANY, NEW YORK 12227

October 6, 1982

Barney & Helen Gadziala
R.D. Harts Hill
Whitesboro, NY 13492

Dear Mr. & Mrs. Gadziala:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BARNEY GADZIALA and HELEN GADZIALA	:	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 1973, 1974 and 1975.	:	

Petitioners, Barney Gadziala and Helen Gadziala, RD Harts Hill, Whitesboro, New York 13492, filed a petition for redetermination or for refund of personal income tax and unincorporated business tax under Articles 22 and 23 of the Tax Law for the years 1973, 1974 and 1975 (File No. 21832).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on May 16, 1980 at 9:15 A.M. Petitioners Barney Gadziala and Helen Gadziala, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined petitioners' tax liability as a result of a field audit.

FINDINGS OF FACT

1. Petitioners, Barney Gadziala and Helen Gadziala, timely filed New York State income tax resident returns (Form IT-201) and New York State unincorporated business tax returns (Form IT-202) for 1973 through 1975.

2. Petitioner Barney Gadziala was in the service station business and did business under the name and style of Barney's Service Station on Oriskany

Boulevard, Yorkville, New York. Besides selling gasoline and repairing cars, Mr. Gadziala also bought, repaired and sold used cars. Additionally, he did snowplowing and sold Christmas trees.

3. On January 30, 1978, based on a field audit, the Audit Division issued two notices of deficiency. One notice was issued against petitioners, Barney Gadziala and Helen Gadziala, asserting additional personal income tax of \$4,477.24, plus penalty of \$223.85 (pursuant to section 685(b) of the Tax Law) and interest of \$990.68, for a total of \$5,691.77. The other notice was issued against petitioner Barney Gadziala asserting additional unincorporated business tax of \$1,849.77, plus penalty of \$92.49 (pursuant to section 685(b) of the Tax Law) and interest of \$424.67, for a total due of \$2,366.93.

4. The Audit Division examined the books and records of petitioner Barney Gadziala. It utilized the bank deposit method of reconstructing income, along with analysis of both petitioner's living expense and cash expended for capital items. The Audit Division determined that petitioner underreported receipts by \$17,269.77, \$22,440.33 and \$13,186.76 for 1973, 1974 and 1975, respectively.

5. No information with respect to the condition of petitioner's business books and records was presented at the hearing. The liabilities for personal income tax and unincorporated business tax shown on the notices of deficiency dated January 30, 1978 were determined by the actual expenditures made by petitioners based on analysis of business deposits and expenditures, and cash expended for the construction of a building to be used as rental property.

6. At the hearing, the Audit Division stipulated that the petitioners did receive gifts and/or loans from family members in the amounts of \$3,000.00, \$17,700.00 and \$7,300.00 for 1973 through 1975, respectively. It is noted that for 1974, as the result of the audit, petitioners had been allowed a \$10,000.00

loan from relatives. Therefore, the understatement of income for 1974 should be reduced by \$7,700.00 and for 1973 by \$3,000.00 and for 1975 by \$7,300.00.

7. The petitioners alleged that, prior to and during the period in issue they had between \$27,000.00 and \$30,000.00, some of which was in gold certificates, in a box under their bed. The money was purported to be an accumulation of gifts (the gold certificates) from petitioner Barney Gadziala's mother over a period of at least the last twenty years and a portion was from petitioners' savings. The petitioners presented different denominations of gold certificates which they claimed were part of the accumulation of gold certificates. The petitioners also presented an affidavit from petitioner Barney Gadziala's sister which stated that their mother, on numerous occasions, gave sums of money to petitioner Barney Gadziala. The petitioners also received monies as gifts from other family members. This was documented by affidavits from family members. However, the affidavits in some cases did not indicate the exact amount of money received as gifts from the family members.

CONCLUSIONS OF LAW

A. That the petitioners have not sustained the burden of proof required by section 689(e) of the Tax Law, in establishing by a fair preponderance of all the available evidence, that they did in fact have sources of nontaxable income during the years at issue to cover all discrepancies determined by the Audit Division.

B. That the Audit Division is directed to reduce the understatement of income for the years at issue by the amounts indicated in Finding of Fact "6", supra.

C. That petitioners have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that the understatement of income was not

due to negligence. Therefore, the penalties imposed by section 685(b) of the Tax Law are sustained.

D. That the petition of Barney Gadziala and Helen Gadziala is granted to the extent indicated in Conclusion of Law "B", supra, but in all other respects denied, and the notices of deficiency dated January 30, 1978 are sustained as modified by the Audit Division in accordance with this decision.

DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER