

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frank M. Holohan :
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 :
1964. :
_____:

AFFIDAVIT OF MAILING

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 Frank M. Holohan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

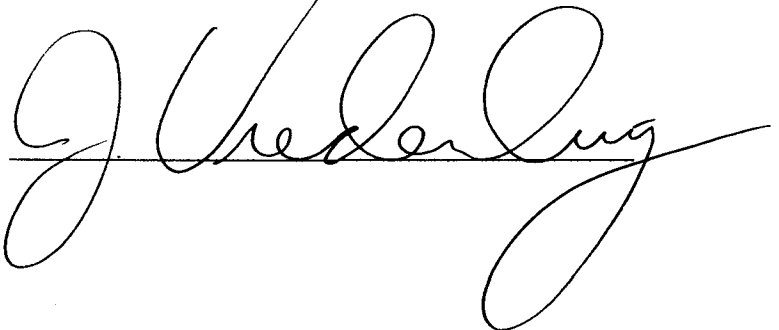
Frank M. Holohan
5 Cherry St.
E. Hanover, NJ 07836

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 :
Frank M. Holohan :
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 :
1964 :

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 Allen S. Stim the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Allen S. Stim
4 Cynthia Lane
Plainview, NY 11803

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.

Annice P. Hagelund

J. Vredenburg

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

April 23, 1982

Frank M. Holohan
5 Cherry St.
E. Hanover, NJ 07936

Dear Mr. Holohan:

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
Allen S. Stim
4 Cynthia Lane
Plainview, NY 11803
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK M. HOLOHAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1964.	:	

Petitioner, Frank M. Holohan, 5 Cherry Street, East Hanover, New Jersey, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1964 (File No. 14251).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 6, 1979 at 10:45 A.M. Petitioner appeared by Allen S. Stim, Esq. The Audit Division appeared by Peter Crotty, Esq. (A. Schwartz, Esq., of counsel).

ISSUE

Whether petitioner had race track winnings of \$14,666.60 during 1964.

FINDINGS OF FACT

1. Petitioner, Frank M. Holohan, timely filed a New York State Income Tax Resident Return for 1964, on which he reported wage income of \$3,234.00, interest income of \$202.43, and dividend income (after any exclusions) of \$51.00.
2. On January 22, 1968, the Income Tax Bureau issued a Notice of Deficiency against petitioner, imposing additional personal income tax for 1964 on the grounds that race track winnings of \$14,666.60 were found to be unreported

additional income. The standard deduction of \$1,000.00 was allowed in lieu of the \$541.00 in New York State itemized deductions claimed.

3. Petitioner testified that on November 18, 1964, he was requested by an acquaintance called "Lucky" (who was a known gambler) to cash a winning race track ticket at Yonkers Raceway, and collected the \$14,666.60 at issue. He further testified that the money was turned over to "Lucky" who in turn gave petitioner \$300.00.

4. On August 13, 1968, petitioner rendered a statement to the Income Tax Bureau, relating all the information and details of the race track incident and, as a result, the Bureau initiated an investigation of "Lucky". The Income Tax Bureau held petitioner's matter in abeyance until the Bureau's investigation of "Lucky" was completed.

5. The Internal Revenue Service conducted its own investigation of "Lucky". The Income Tax Bureau indicated that the Internal Revenue Service and "Lucky" were involved in an appellate action. The Internal Revenue Service did not initiate any action against petitioner, Frank M. Holohan, prior, during or after the investigation of "Lucky".

6. In 1975, the Income Tax Bureau indicated that the investigation of "Lucky" was completed and that there was no evidence that the \$14,666.60 was included in his or in any other person's tax return. Citing section 697(e) [Secrecy requirements and penalties for Violation] of the Tax Law, the Income Tax Bureau did not allow petitioner to examine reports or memorandums issued by them surrounding the investigation of "Lucky" or to examine a Federal determination issued by the Internal Revenue Service.

7. The Audit Division did not reveal the details, findings and nature of the examination of petitioner. There was no indication that petitioner placed

large sums of money in bank accounts or that petitioner's lifestyle, subsequent to November 18, 1964, was significantly increased.

8. The Audit Division contended that it could not determine whether or not the \$14,666.60 was included in the Federal determination issued against the individual identified by petitioner as "Lucky".

9. There are indications in the file that petitioner cooperated in the Federal and State investigations of "Lucky", although the extent of petitioner's participation may never be fully appreciated because of the death of petitioner's counsel during those proceedings.

10. Based on petitioner's demeanor during the course of his testimony, his statements as to turning over the money to "Lucky" are entirely credible.

CONCLUSIONS OF LAW

A. That as a result of petitioner's testimony, and surrounding circumstances, including the investigation of "Lucky" and petitioner's own lifestyle, petitioner has met the burden of proof as imposed under section 689(e) of the Tax Law, with regard to his claim that the winnings were merely "picked up" by him for transmittal to "Lucky".

B. That the unusual circumstances of this case, including petitioner's participation in the lengthy investigation of "Lucky", the death of petitioner's counsel during the course of that protracted investigation, and the unavailability at this time of many technical details concerning that investigation may contribute to petitioner's sustaining substantial prejudice, if the instant petition were denied in its entirety.

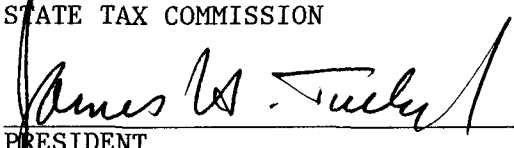
C. That petitioner, Frank M. Holohan, had additional income of \$300.00 during 1964 in accordance with the meaning and intent of Article 22 of the Tax Law.

D. That the petition of Frank M. Holohan is granted to the extent of reducing additional income from \$14,666.60 to \$300.00. The Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued January 22, 1968. Except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

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AFFIDAVIT OF MAILING
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Tax under Article 22 of the Tax Law for the Year :
1964. :
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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 27th day of May, 1982, he served the within notice of Decision by certified mail upon Frank M. Holohan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank M. Holohan
5 Cherry St.
Morris Plains, NJ 07950

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
27th day of May, 1982.

Cecilia P. Hagelund

Jay Vredenburg

REQUEST FOR BETTER ADDRESS

Requested by <i>J. Vedeny</i>	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request <i>4-30-82</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>NL</i>	Date of Petition <i>S.C. DC. 4-23-82</i>
Name <i>Frank M. Holohan</i>	
Address <i>5- Cherry St. E. Hanover, NJ 07936</i>	

Results of search by Files

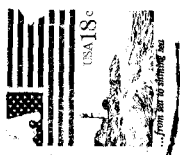
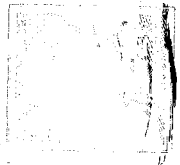
<input checked="" type="checkbox"/> New address: <i>put letter from R.P. 3-2-82</i>	<i>5- CHERRY ST. MORRIS PLAINS N.J 07958</i>
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search

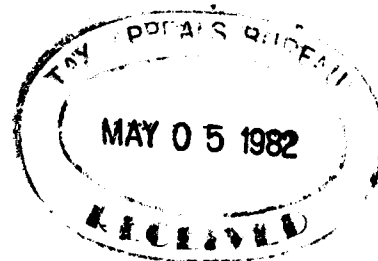
PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

ALLEN S. STIM
COUNSELLOR AT LAW
4 CYNTHIA LANE
PLAINVIEW, N. Y. 11803

State of New York
State Tax Commission
Tax Appeals Bureau
State Campus
Albany, New York 12227



ALLEN S. STIM
COUNSELLOR AT LAW
4 CYNTHIA LANE
PLAINVIEW, N. Y. 11803
—
(516) WE 5-6853



May 2nd, 1982

State of New York
State Tax Commission
Tax Appeals Bureau
State Campus
Albany, New York 12227

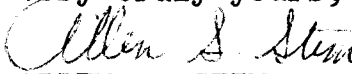
Re: Matter of the Petition of Frank M.
Holohan for Redetermination of a
Deficiency or for Refund of Personal
Income Tax under Article 22 of the Tax
Law for the Year 1964

Dear Sirs;

This past week I received by certified mail a copy of the Decision of the State Tax Commission in the above matter and of the transmittal letter to the taxpayer addressed Frank M. Holohan, 5 Cherry Street, E. Hanover, N.J. 07936.

The above is the wrong address for Mr. Holohan who never received either the letter or the decision. Mr. Holohan's address is 5 Cherry Street, Morris Plains, New Jersey 07950.

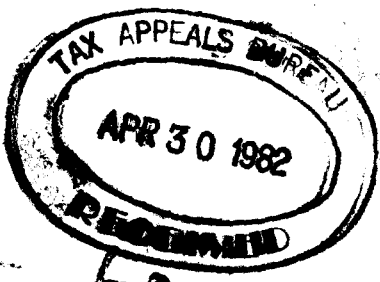
Very truly yours,


ALLEN S. STIM

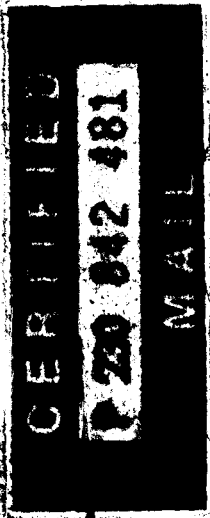
TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

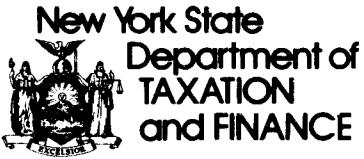
Frank M. Holohan
5 Cherry St.
E. Hanover, NJ 07033

07936



RETURNED TO
UNCLAIMED
ATTEMPTED DELIVERY
INSUFFICIENT ADDRESS
NO SUCH STREET
NO SUCH OFFICE IN STATE
DO NOT REPLY IN THIS ENVELOPE





MEMORANDUM

AD-53 (1/80)

TO: Al Nendza, Assistant Director
FROM: Arnold M. Glass, Associate Attorney
SUBJECT: Frank M. Holohan

OFFICE: Law Bureau
DATE: May 7, 1982

This office has been advised by telephone that Mr. Holohan received advice of the decision with respect to his matter through his attorney, as the decision mailed to him was not properly addressed. Kindly send decision to Mr. Holohan at 5 Cherry Street, Morris Plains, New Jersey, 07950.


Associate Attorney

AMG/pgc