

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Anthony Massaro	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Anthony Massaro, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony Massaro
#3 Wesley Chapel Rd.
Suffern, NY 10901

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
18th day of June, 1982.

Bernie A. Hagelund

J. Vredenburg

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

June 18, 1982

Anthony Massaro
#3 Wesley Chapel Rd.
Suffern, NY 10901

Dear Mr. Massaro:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ANTHONY MASSARO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1976.	:	

Petitioner, Anthony Massaro, 3 Wesley Chapel Road, Suffern, New York 10901 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 1976 (File No. 29180).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 19, 1981 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq. of counsel).

ISSUES

Whether petitioner, a shareholder in a professional corporation, must add to his Federal adjusted gross income, the amount of taxes paid by the corporation for old age, survivors and disability insurance on his FICA wages.

FINDINGS OF FACT

1. Petitioner, Anthony Massaro, timely filed a joint New York State Income Tax Resident Return with his wife for the year 1976 whereon he reported wage income from Anthony Massaro, M.D., P.C., a professional service corporation of which he was a shareholder.

2. On August 24, 1978 the Audit Division issued a Statement of Audit Changes to petitioner whereon it stated that:

"Section 612(b)(8) of the New York State Tax Law requires a shareholder of a professional corporation to add to his Federal adjusted gross income the amount of taxes paid by the corporation for old age, survivors and disability insurance on FICA wages for the calendar year of the shareholder."

Based on the above, the modification required pursuant to section 612(b)(8) of the Tax Law was computed to be \$757.35. Accordingly, a Notice of Deficiency was issued against petitioner on January 24, 1979 asserting additional personal income tax of \$116.44, plus interest of \$17.57, for a total due of \$134.01.

3. Petitioner argued that he should not be required to make the modification provided for in section 612(b)(8) of the Tax Law since contributions to his FICA account were made by a second employer, thereby affording him no benefit from those contributions made by the professional corporation.

CONCLUSIONS OF LAW

A. That section 612(b)(8) of the Tax Law provides that:

"There shall be added to Federal adjusted gross income --
In the case of a taxpayer who is a shareholder of a corporation organized under Article fifteen of the business corporation law, the amount which is required to be paid as a tax by such corporation pursuant to section thirty-one hundred eleven (a) of the internal revenue code with respect to wages of such taxpayer for the calendar year ending in or with such taxpayer's taxable year."

Accordingly, petitioner is required to add to his Federal adjusted gross income, the amount of taxes paid by the professional corporation for old age, survivors and disability insurance on his FICA wages.

B. That the petition of Anthony Massaro is denied and the Notice of Deficiency dated January 24, 1979 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION

James G. Tull
PRESIDENT

Frank R. Koenig
COMMISSIONER

Michael J. Tull
COMMISSIONER