

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Angelo L. Notarfonzo
and Lois Notarfonzo

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax & UBT under Article 22 & 23 of the Tax Law for :
the Year 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 27th day of May, 1982, he served the within notice of Decision by certified mail upon Angelo L. Notarfonzo and Lois Notarfonzo the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Angelo L. Notarfonzo
and Lois Notarfonzo
P.O. Box 305
Horseheads, NY 14845

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.

Cornie A. Hagelund

J. Vredenburg

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

May 27, 1982

Angelo L. Notarfonzo
and Lois Notarfonzo
P.O. Box 305
Horseheads, NY 14845

Dear Mr. & Mrs. Notarfonzo:

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
ANGELO L. NOTARFONZO AND LOIS NOTARFONZO
for Redetermination of a Deficiency or for
Refund of Personal Income and Unincorporated
Business Taxes under Articles 22 and 23 of
the Tax Law for the Year 1975.

DECISION

Petitioners, Angelo L. Notarfonzo and Lois Notarfonzo, P.O. Box 305, Horseheads, New York 14845, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1975 (File No. 23749).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York, on September 22, 1981 at 9:00 A.M. Petitioner Angelo L. Notarfonzo appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined petitioners' tax liability for 1975 as a result of a field audit.

FINDINGS OF FACT

1. Petitioners, Angelo L. Notarfonzo and Lois Notarfonzo, timely filed a New York State Income Tax Resident Return for 1975. Petitioner Angelo L. Notarfonzo also filed a New York State Unincorporated Business Tax Return for said year.

2. Petitioner Angelo L. Notarfonzo owned and operated Sonny's Bar & Grill and Sonny's Variety Store in Horseheads, New York.

3. On June 12, 1978, based on a field audit, the Audit Division issued a Notice of Deficiency against petitioners for 1975, asserting additional personal income tax of \$229.04 and unincorporated business tax of \$77.33, plus interest of \$53.38, for a total due of \$359.75. The deficiency is based on the Audit Division's utilization of a source and application of funds method of auditing. The Audit Division conducted the audit in accordance with established audit procedures and techniques. At the initial interview pursuant to the audit, petitioner Angelo L. Notarfonzo did not reveal that he maintained any cash at home. Based on this audit, the Audit Division found petitioners had unreported income of \$5,137.56.

4. At the hearing, petitioner Angelo Notarfonzo contended that he had five to seven thousand dollars in a safe at home which was an accumulation of earnings over the years. Petitioner Angelo Notarfonzo offered no documentary evidence to support his contentions.

CONCLUSIONS OF LAW

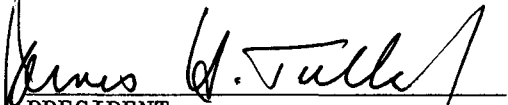
A. That petitioners, Angelo L. Notarfonzo and Lois Notarfonzo, failed to sustain the burden of proof imposed by section 689(e) of the Tax Law which requires them to establish that the Notice of Deficiency issued on June 12, 1978 was erroneous, arbitrary or capricious.

B. That the petition of Angelo L. Notarfonzo and Lois Notarfonzo is denied and the Notice of Deficiency issued June 12, 1978 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

MAY 27 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER