

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Daniel A. Perasa : 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 :
1970. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Daniel A. Perasa, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel A. Perasa
122 Bay 38th St.
Brooklyn, NY 11219

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
9th day of April, 1982.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Daniel A. Perasa :

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 :
1970.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Thomas Dunleavy the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas Dunleavy
19 Vista Rd.
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
9th day of April, 1982.

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

April 9, 1982

Daniel A. Perasa
122 Bay 38th St.
Brooklyn, NY 11219

Dear Mr. Perasa:

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
Thomas Dunleavy
19 Vista Rd.
Plainview, NY 11803
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| DANIEL PERASA | : | DECISION |
| for Redetermination of a Deficiency or for | : | |
| Refund of Personal Income Tax under Article 22 | : | |
| of the Tax Law for the Year 1970. | : | |

Petitioner, Daniel Perasa, 122 Bay 38th Street, Brooklyn, New York 11219, 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 1970 (File No. 23377).

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 July 9, 1981 at 2:45 P.M. Petitioner appeared by Thomas Dunleavy, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner had filed a New York State personal income tax return for the year 1970.

FINDINGS OF FACT

1. On May 12, 1977 the Audit Division issued a Statement of Audit Changes to Daniel Perasa (hereinafter petitioner) wherein his tax liability for 1970 was computed based on available information pursuant to section 681(a) of the Tax Law since there was no record of petitioner having filed a New York State personal income tax return for said year. New York taxable income per said statement was derived using petitioner's corrected Federal taxable income incorporating adjustments made pursuant to a Federal audit. Accordingly, a

Notice of Deficiency was issued against petitioner on June 26, 1978 asserting personal income tax of \$512.54, penalties of \$243.46 pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law, for failure to file a return and failure to pay the tax determined to be due, respectively, plus interest of \$221.31, for a total due of \$977.31.

2. No evidence, documentary or otherwise, was offered to support petitioner's contention that he had filed a 1970 return.

3. Petitioner argued that he was not given credit for personal income taxes withheld during 1970 and although he was given ample opportunity to submit evidence of same subsequent to the hearing held herein, he failed to do so.

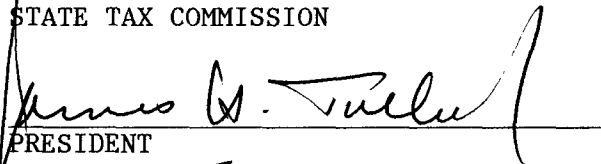
CONCLUSIONS OF LAW

A. That petitioner, Daniel Perasa, failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he had filed a New York State personal income tax return for taxable year 1970. Accordingly, it is hereby concluded that petitioner had failed to file such return.

B. That the petition of Daniel Perasa is denied and the Notice of Deficiency dated June 26, 1978 is sustained, together with such additional penalties and interest as may be lawfully owing.

DATED: Albany, New York
APR 09 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER