

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

John N. & Angie Rigas

:

:

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 1971.

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 John N. & Angie Rigas, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John N. & Angie Rigas
104-15 118th St.
Richmond Hill, NY 11419

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.

James A. Gayland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

John N. & Angie Rigas

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Tax & UBT under Article 22 & 23 of the Tax Law for:
the Year 1971.

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 Philip J. Coundouris the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip J. Coundouris
9 Country Club Dr.
Port Washington, NY 11050

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.

Conrad A. Bageant

J. Vredenburg

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

April 23, 1982

John N. & Angie Rigas
104-15 118th St.
Richmond Hill, NY 11419

Dear Mr. & Mrs. Rigas:

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
Philip J. Coundouris
9 Country Club Dr.
Port Washington, NY 11050
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN N. RIGAS and ANGIE RIGAS	:	DECISION
for Redetermination of Deficiencies or	:	
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Year 1971.	:	

Petitioners, John N. Rigas and Angie Rigas, his wife, 104-15 118th Street, Richmond Hill, New York 11419, filed a petition for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1971 (File No. 14312).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 16, 1978 at 10:45 A.M. Petitioners appeared by Philip J. Coundouris, Esq. The Audit Division appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUES

I. Whether and to what extent do deposits to a previously undisclosed checking account of petitioner Angie Rigas represent additional taxable income to petitioners for personal income tax purposes.

II. Whether said deposits constitute additional unincorporated business taxable income of petitioner John N. Rigas.

FINDINGS OF FACT

1. Petitioners, John N. Rigas and Angie Rigas, his wife, timely filed a joint New York State Income Tax Resident Return for 1971 (Form IT-201).

Attached thereto was a New York State Unincorporated Business Tax Return (Form IT-202) for petitioner John N. Rigas, including a copy of the Schedule C (Income or Loss From Business or Profession) from petitioners' Federal Income Tax Return (Form 1040) for 1971.

2. On January 31, 1975, petitioners executed a Consent Fixing Period of Limitation upon Assessment of Personal Income and Unincorporated Business Taxes for 1971 to and including April 15, 1976.

3. On January 26, 1976, the Audit Division issued a Statement of Audit Changes to petitioners revising a Form IT-38FA issued on July 11, 1975 advising them that as a result of a field audit for 1971, additional personal income tax had been found to be due. On the same date, a Notice of Deficiency asserted against petitioners additional personal income tax of \$13,544.44, plus penalty of \$677.22 and interest of \$3,071.88, for a total due of \$17,293.54.

4. On January 26, 1976, the Audit Division issued a Statement of Audit Changes to petitioner John N. Rigas revising a Form IT-38FA issued July 11, 1975 advising him that as a result of a field audit for 1971, unincorporated business tax had been found to be due. A Notice of Deficiency issued on the same date asserted against petitioner John N. Rigas unincorporated business tax of \$5,535.85, plus penalty of \$276.79 and interest of \$1,255.53, for a total due of \$7,068.17.

5. The Audit Division computed the additional tax due for 1971 as follows:

PERSONAL INCOME

Net adjustment per audit	\$103,542.74
Taxable income previously stated	4,489.00
Corrected taxable income	<u>\$108,031.74</u>

Tax on corrected taxable income	\$ 13,684.44
Less statutory credit	25.00
Corrected tax due	<u>\$ 13,659.44</u>
Tax previously computed	115.00
Deficiency	<u>\$ 13,544.44</u>
Penalty @ 5%	\$ 677.22
UNINCORPORATED BUSINESS	
Net adjustment per audit	\$ 99,113.74
Taxable business income previously stated	1,538.00
Corrected taxable business income	<u>\$100,651.74</u>
Tax at 5.5%	\$ 5,535.85
Less business tax credit	-0-
Corrected unincorporated business tax due	5,535.85
Unincorporated business tax previously computed	-0-
Deficiency	<u>\$ 5,535.85</u>
Penalty at 5%	\$ 276.79

6. Petitioner John N. Rigas operated a retail florist shop at 118-19 Liberty Avenue, Richmond Hill, New York from 1955 through the year at issue. He was a sole proprietor. Neither John N. Rigas nor his wife appeared personally at the hearing.

7. The tax auditors who had seen and talked with petitioners were no longer with the Department of Taxation and Finance at the time of the hearing. Their supervisor had also left. The auditor who did appear and testify relied entirely upon the notes, reports and schedules in the audit file. Petitioners' representative had not been personally familiar with petitioners' business in 1971, however, he did appear for petitioners during the field audit.

8. In reply to a request dated October 12, 1973 from the Audit Division, petitioners sent a handwritten letter dated December 9, 1973 in which they stated they had no personal checking account in the name of husband and/or wife. Enclosures mentioned in the letter were not available at the hearing.

9. The audit report states: "All records were not made available." It does not state what books and records were available and were seen by the auditor. Among ten pages of notes there are transcripts of parts of a general

ledger, savings bank accounts, insurance and investment accounts, mortgage account, and cash receipts and cash disbursement journals. The auditor satisfied himself that the book entries correctly carried the expenses recorded to the schedules filed with petitioners' federal and state tax returns. According to notes in the auditor's file, petitioner John N. Rigas recorded the payment of expenses by checks drawn on the account of John N. Rigas, Florist, maintained at United National Bank of Queens County, New York. Complete transcripts of deposits in the account and checks paid were obtained for 1971.

10. The auditor found that petitioner Angie Rigas had a personal checking account at the United National Bank of Queens County, New York with her home address. Partial transcripts of the deposits and checks paid were obtained. Notes in the file indicate that cancelled checks for 1971 were produced by petitioners for the auditor's inspection. These checks were returned to petitioners, and when production was later requested, the auditor was told that petitioner Angie Rigas had destroyed all the cancelled checks. Petitioners' representative testified that efforts to obtain microfilm copies of the checks from the bank had been unsuccessful. He stated that the numerous check transactions in petitioner Angie Rigas' personal checking account had been merely exchanges due to petitioners' cashing checks for customers as an accommodation. Petitioners' representative averred that petitioner Angie Rigas was a housewife who did not work in the florist shop except to relieve her husband for lunch.

11. Neither petitioner appeared personally at the formal hearing. The audit indicates that petitioners only sources of income were petitioner John Rigas' florist shop and the rental of one floor of their two family dwelling. Petitioners refused any explanation of the personal checking account of petitioner

Angie Rigas. Examination of the transcripts of that account show almost daily deposits and checks issued. A summary follows:

ANALYSIS PERSONAL CHECKING ACCOUNT - 1971
Angie Rigas

<u>Month</u>	<u>Opening Balance</u>	<u>Number of Deposits</u>	<u>Total of Deposits</u>	<u>Number of Checks</u>	<u>Closing Balance</u>
January	\$2,538.16	21	\$ 8,797.64	33	\$1,876.27
February	*	*	10,704.81	*	3,152.00
March	3,152.00	23	10,778.00	31	2,639.20
April	2,639.20	23	11,534.00	39	873.17
May	*	*	*	*	1,819.72
June	1,819.72	23	12,643.00	32	2,679.59
July	2,679.59	19	8,612.00	22	2,683.18
August	2,683.18	13	9,245.00	28	956.85
September	956.85	17	9,055.59	25	*
October	*	*	9,654.00	*	4,095.50
November	4,095.50	3	940.00	38	305.07
December	305.07	5	1,450.00	16	694.83
TOTAL			\$ 93,414.04		
Average for 11 months			8,492.18		
Total for 1971 (per auditor)			\$101,824.41		

* Information not in record.

12. Petitioner Angie Rigas recorded no social security number on her income tax return. There is no indication that she was engaged in any business. The source of her bank deposits and the payees of her numerous checks remain unexplained.

CONCLUSIONS OF LAW

A. That the sum of deposits to the personal checking account of petitioner Angie Rigas was properly added to the taxable personal income of the joint petitioners for 1971. While proof of bank deposits standing alone does not establish income,

"...deposits in checking accounts are so often made up of income that where, as here, there is a fair inference to be drawn from the facts, it was proper to give it effect."

Hague Estate v. Commissioner, 132 F.2d 775, 777
(2nd Cir. 1943).

This reasoning is also set out at some length by Circuit Judge William Hastie in Goe v. Commissioner, 198 F.2d 851, 852 (3rd Cir. 1952), aff'g 10 T.C.M. (CCH) 307 (1951), cert. denied, 344 U.S. 897, 97 L.Ed. 693, 73 S. Ct. 277 (1952).

Petitioners failed and refused to take the opportunity of explaining the source of the deposits. Income from whatever source derived, though determined by inference, is taxable.

B. That in accordance with Finding of Fact "11" supra, there appears to be no demonstrable basis for assuming that the unexplained bank deposits of petitioner Angie Rigas were not part of the unincorporated business income of petitioner John N. Rigas. Accordingly, the amount of the personal checking account deposits of petitioner Angie Rigas should not be removed from the corrected unincorporated business income of her husband, John N. Rigas.

C. That the failure of petitioners to report as income the deposits in petitioner Angie Rigas' personal checking account constitutes such negligence or intentional disregard of the provisions of the Tax Law as to warrant the imposition of penalty in accordance with section 685(b) of the Tax Law. No fraud is imputed.

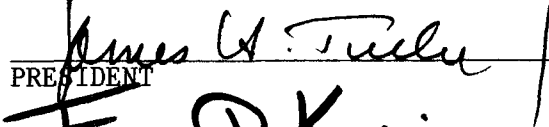
D. That the petition of John N. Rigas and Angie Rigas is denied and the Notice of Deficiency dated January 26, 1976 for unincorporated business tax against John N. Rigas is sustained and the Notice of Deficiency dated January 26,

1976 against John N. Rigas and Angie Rigas for personal income tax, is also sustained, together with such penalty and interest as may be lawfully due.

DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-36 (9/76)

State of New York - Department of Taxation and Finance
Tax Appeals Bureau

*Rigas,
John N.
Angie*

REQUEST FOR BETTER ADDRESS

Requested by <i>[Signature]</i>	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request MAY 20 1982
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>115-03-3785</i>	Date of Petition <i>Fr. Dc. 4-23-82</i>
Name <i>John N. & Angie Rigas</i>	
Address <i>104-15 118th Street Richmond Hill, N.Y. 11419</i>	

Results of search by Files

<input type="checkbox"/> New address:	<i>unclaimed</i>
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search

PERMANENT RECORD

FOR INSERTION IN TAXPAYER'S FOLDER

TA 26 (9-79)

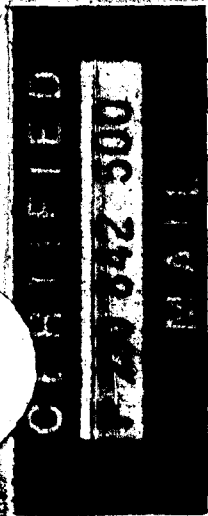
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N. Y. 12227

Mr. & Mrs. Rigas

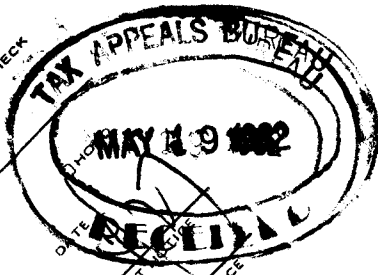
John N. & Angie Rigas
104-15 118th St.
Richmond Hill, NY 11419

S



5/12

CLAIM CHECK
NO.



2ND NOTICE

RETURN

Detached from
PS Form 3849-A
May 1979

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

April 23, 1982

John N. & Angie Rigas
104-15 118th St.
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Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Philip J. Coundouris
9 Country Club Dr.
Port Washington, NY 11050
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
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of	:	
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JOHN N. RIGAS and ANGIE RIGAS	:	DECISION
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for Redetermination of Deficiencies or	:	
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B. That in accordance with Finding of Fact "11" supra, there appears to be no demonstrable basis for assuming that the unexplained bank deposits of petitioner Angie Rigas were not part of the unincorporated business income of petitioner John N. Rigas. Accordingly, the amount of the personal checking account deposits of petitioner Angie Rigas should not be removed from the corrected unincorporated business income of her husband, John N. Rigas.

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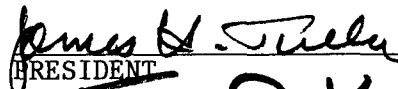
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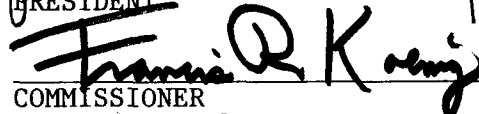
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DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER