

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
A. Hamid Alizadeh :
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 :
1972. :
_____ :

State of New York
County of Albany

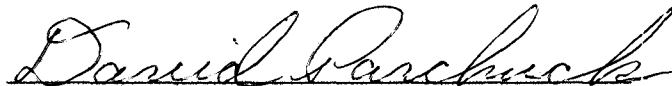
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of May, 1983, he served the within notice of Decision by certified mail upon A. Hamid Alizadeh, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

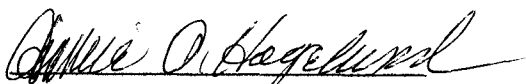
A. Hamid Alizadeh
166 Lee Ave.
Brooklyn, NY 11211

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
20th day of May, 1983.




AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
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AFFIDAVIT OF MAILING
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Tax under Article 22 of the Tax Law for the Year :
1972. :

State of New York
County of Albany

David Parchuck, 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 20th day of May, 1983, he served the within notice of Decision by certified mail upon Solomon Blutrach the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Solomon Blutrach
Hugo Schwartz & Co., P.C.
100 Merrick Road - West Bldg.
Rockville Centre, NY 11570

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
20th day of May, 1983.

David Parchuck

Connie A. Haglund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 20, 1983

A. Hamid Alizadeh
166 Lee Ave.
Brooklyn, NY 11211

Dear Mr. Alizadeh:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Solomon Blutrach
Hugo Schwartz & Co., P.C.
100 Merrick Road - West Bldg.
Rockville Centre, NY 11570
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|--|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| A. HAMID ALIZADEH | : | DECISION |
| for Redetermination of a Deficiency or for | : | |
| Refund of Personal Income Tax under Article 22 | : | |
| of the Tax Law for the Year 1972. | : | |

Petitioner, A. Hamid Alizadeh, 166 Lee Avenue, Brooklyn, New York 11211, 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 1972 (File No. 29040).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 29, 1982 at 9:30 A.M. Petitioner appeared by Hugo Schwartz & Company, P.C. (Solomon Blutrach, P.A.). The Audit Division appeared by Paul B. Coburn, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether the petitioner, A. Hamid Alizadeh, timely filed a New York State Personal Income Tax Return for the year 1972 and paid the "balance due" shown thereon.

FINDINGS OF FACT

1. On March 4, 1977, the Audit Division issued a Statement of Audit Changes against petitioner, A. Hamid Alizadeh, showing additional personal income tax due for the 1972 taxable year of \$4,024.39, penalties under Tax Law 685(a)(1) and (a)(2) of \$1,851.22, plus interest. The following reason for such action was provided:

"A search of our files has failed to locate a New York State income tax return filed in your name and since you did not substantiate the payment as shown due on the copy of your return submitted

August 3, 1976, your tax liability is computed pursuant to Section 681(a) of the New York State Tax Law."

The Audit Division also increased petitioner's New York taxable income by \$653.00 which represented "an unreported Federal Audit Change". It calculated petitioner's New York personal income tax for 1972 as \$10,167.39.

2. On January 25, 1980, the Audit Division issued a Notice of Deficiency against petitioner showing additional tax due or tax deficiencies of \$4,024.39¹ plus penalties and interest of \$3,957.35. A copy of the Statement of Audit Changes described in Finding of Fact "1" was attached.

3. The Audit Division sent petitioner a letter dated July 18, 1976 stating that:

"Under authorization of Federal Law (Section 6103(b) of the Internal Revenue Code), this office has obtained information that the Internal Revenue Service audited your Federal income tax return for the above year and assessed a deficiency or reduced your refund. The information indicates that you were required to file a New York State income tax return but we have been unable to locate your New York return."

4. In response to the letter dated July 18, 1976, petitioner, by his accountant and representative, Solomon Blutrach, sent a copy of his return for the tax year at issue which was received by the Audit Division on August 3, 1976. On such return, petitioner showed New York personal income tax for 1972 of \$10,067.00, which is \$100.39 less than the tax calculated by the Audit Division as noted in Finding of Fact "1", "NY State Tax withheld" of \$6,143.00 and a "Balance Due" of \$3,924.00.

5. Solomon Blutrach has been petitioner's accountant for approximately the last fifteen years. He testified that he has prepared petitioner's tax returns during such period. Petitioner's United States income tax return for

¹ The Audit Division conceded that \$6,143.00 was withheld from petitioner's wages and applied said amount against the calculated tax of \$10,167.39.

1972 was timely filed, and Solomon Blutrigh testified that petitioner's New York personal income tax return and United States income tax return were both mailed on April 1, 1973. "I brought that tax return (the 1972 New York State personal income tax return) to him, had him (sign) it and made certain that he mailed it, because if that didn't go out, the federal wouldn't go out."

According to Solomon Blutrigh, the matter at hand is the first time that a tax collector has claimed that petitioner has not timely filed a tax return.

6. Petitioner did not provide the Audit Division with a cancelled check showing that he paid New York State personal income tax for the 1972 taxable year. Solomon Blutrigh testified that "Now, I am unable to bring the checks to show that this was paid because, number one, the place was renovated for a medical center and an abortion center, and during the time of the construction, everything was a mess...they (addicts) ransacked the whole place...we've had a number of tax examinations by the various government agencies...and they took papers. The Hynes Commission came in and ransacked the files and took the papers away...". In addition, Mr. Blutrigh testified that "we went to the bank and asked the bank if they could give us photostatic copies of cancelled checks. They said they don't keep records that long."

Mr. Blutrigh also testified that "I think it was 1980, eight years later, or six, seven years later -- I mean, normally we only keep records for three years, therefore, there is no way how I can bring -- the point that I'm trying to bring in is, what took Albany so long to notify...". However, the letter of July 18, 1976 described in Finding of Fact "3", herein, requested

that petitioner furnish "the serial number² stamped on front of check" if his payment of 1972 personal income taxes was made by check. Therefore, the Audit Division provided petitioner with notice that he should substantiate payment of his 1972 personal income taxes with information stamped on his cancelled check just over 3 years from the date he claimed he filed his return, and it was then, in 1976, that petitioner should have tried to obtain a copy of his cancelled check.

7. Petitioner did not testify at the hearing.

CONCLUSIONS OF LAW

A. That pursuant to Tax Law §689(e), the burden of proof is upon petitioner to show that he timely filed his New York State personal income tax return for 1972 and paid the tax thereon. Matter of Daniel Perasa, State Tax Commission, April 9, 1982.

B. That petitioner has not sustained his burden of proof since he has failed to adequately substantiate payment of his 1972 personal income taxes. Petitioner did not provide adequate justification for his failure to provide the Audit Division with the serial number stamped on his cancelled check. He received notice from the Audit Division approximately three years after the

² Pursuant to the State Administrative Procedure Act §306.4, we take official notice of the fact that in 1974 prior to cashing a check in payment of personal income taxes, the Returns and Payments Processing Section of the Income Tax Bureau would have stamped the check and the return filed with an identical serial number.


alleged payment date that he must furnish the serial number and not six to eight years after the alleged payment as stated by his representative. In addition, petitioner did not appear at the hearing, herein, to testify under oath concerning his inability to provide the Audit Division with such information or a copy of his cancelled check.


C. That the petition of A. Hamid Alizadeh is denied.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 20 1983


PRESIDENT


COMMISSIONER


COMMISSIONER