

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mark A. Cassidy :
: 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 Years :
1976 - 1978. :
:

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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Mark A. Cassidy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mark A. Cassidy
20 Fruitwood Dr.
Burnt Hills, NY 12027

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, 1983.

David Parchuck

James A. Highland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

Mark A. Cassidy
20 Fruitwood Dr.
Burnt Hills, NY 12027

Dear Mr. Cassidy:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MARK A. CASSIDY	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1976, 1977 and	:	
1978.	:	

Petitioner, Mark A. Cassidy, 20 Fruitwood Drive, Burnt Hills, New York 12027, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1976, 1977 and 1978 (File No. 34240).

A small claims hearing was held before Anthony J. Ciarlone, Jr., Hearing Officer, at the offices of the State Tax Commission, State Campus, Building 9, Room 107, Albany, New York, on December 6, 1982 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether the cost basis of five shares of stock which petitioner received as a gift from his father in 1961 was proper.

FINDINGS OF FACT

1. Petitioner, Mark A. Cassidy, together with his wife, Elizabeth Cassidy,¹ timely filed separate New York State income tax returns for the years 1976,

¹ Elizabeth Cassidy's name appears on the petition for redetermination and the Notice of Small Claims Hearing. The Statutory Notice of Deficiency was issued to Mark A. Cassidy only. Since separate returns were filed and the adjustment at issue pertains solely to Mark A. Cassidy, Elizabeth Cassidy is considered to be neither a petitioner nor a party in this proceeding.

1977 and 1978 on combined forms. Mr. Cassidy reported, on the installment sale basis, the gain from the sale of stock of the Queensbury Country Club, Inc. which he sold on September 2, 1976. He determined the cost basis of the stock as \$195,500.00.

2. On February 19, 1981, the Audit Division issued to petitioner a Statement of Audit Changes detailing the adjusted cost basis of the stock sold as follows:

<u>"Shares</u>	<u>Basis</u>	<u>Explanation</u>
5	\$ 15,000.00	These are the shares which were acquired in 1961 as a gift from father. This value represents one-quarter of the original Capital Stock investment in the corporation.
5	32,850.00	These are the shares purchased in 1973.
5	100,000.00	Remaining 5 shares of 10
15	\$147,850.00	Total Cost Basis - Adjusted."

On April 1, 1981, the Audit Division issued to petitioner Mark A. Cassidy a Notice of Deficiency asserting additional tax due of \$1,635.29, plus interest of \$589.74, for a total of \$2,225.03 for tax years 1976, 1977 and 1978.

3. Petitioner and his wife, for tax year 1976, signed a consent fixing the period of limitation upon assessment of personal income tax to on or before April 15, 1981.

4. Petitioner did not dispute the Audit Division's evaluation of the five shares of stock purchased in 1973 or the five shares valued at \$100,000.00. He did claim that the five shares of stock which he received as a gift are under-valued. He claimed that said five shares should be valued at \$25,000.00.

5. Petitioner's father and another individual formed Queensbury Country Club, Inc. (hereinafter "Queensbury") in 1954 for the purpose of constructing and operating a nine hole golf course and clubhouse which was later increased in 1957 to eighteen holes. Petitioner testified that his father transferred

title to a 53-acre parcel of land with an existing building to the corporation, together with an unspecified sum of money, for a 50 percent interest in Queensbury. The 50 percent interest was represented by 10 shares of Queensbury stock. Petitioner's father gave 5 shares of said stock to petitioner in 1961.

6. Petitioner testified that his father filed a gift tax return for the five shares of stock. However, his father is deceased and petitioner cannot locate a copy of the gift tax return.

7. Copies of papers or documents which petitioner could submit to substantiate the value of the stock have disappeared or were destroyed in 1969 in a fire at the clubhouse of the Queensbury Country Club, Inc. Petitioner testified that the attorney, accountants, etc. who could testify on his behalf are all deceased.

8. Petitioner did submit a copy of Queensbury's 1955 and 1957 U.S. corporation income tax returns. Queensbury's return for the year ending December 31, 1955 reported total capital stock of \$45,127.19 and total assets of \$61,477.19. The copy of the return for the year ending December 31, 1957 reported total capital stock of \$43,365.05 and total assets of \$59,715.05.

9. Petitioner did submit other various documents such as a copy of the assessment roll for Warren County, a copy of the real property assessment, and a map of the lands which comprised the country club. However, the evidence submitted does not substantiate the value of the stock to be any higher than the amount determined by the Audit Division.

CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law imposes the burden of proof upon petitioner except in certain instances which are not here present.

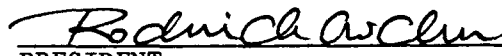
B. That petitioner Mark A. Cassidy has failed to sustain his burden of proof to show that the cost basis of the stock was more than \$15,000.00.


C. That the petition of Mark A. Cassidy is denied and the Notice of Deficiency dated April 1, 1981 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER