

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frank J. & Mary P. Cocozzo :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
& UBT under Article 22 & 23 of the Tax Law for the :
Year 1975. :
AFFIDAVIT OF MAILING

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 17th day of June, 1983, he served the within notice of Decision by certified mail upon Frank J. & Mary P. Cocozzo, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank J. & Mary P. Cocozzo
155 Saratoga Ave.
Mechanicville, NY 12118

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
17th day of June, 1983.

Ann M. Hagelund

David Parchuck

Kathy Pfaffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frank J. & Mary P. Cocozzo :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
& UBT under Article 22 & 23 of the Tax Law for :
the Year 1975. :
:

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 17th day of June, 1983, he served the within notice of Decision by certified mail upon Thomas E. Ryan the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas E. Ryan
Ryan, Brown & Ryan
9 S. Main St., P.O. Box 287
Mechanicville, NY 12118

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
17th day of June, 1983.

Carrie A. Hegeland

David Parchuck
Kathy Pfaffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 171

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

June 17, 1983

Frank J. & Mary P. Cocozzo
155 Saratoga Ave.
Mechanicville, NY 12118

Dear Mr. & Mrs. Cocozzo:

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 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
Thomas E. Ryan
Ryan, Brown & Ryan
9 S. Main St., P.O. Box 287
Mechanicville, NY 12118
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK J. COCOZZO AND MARY P. COCOZZO	:	DECISION
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.	:	

Petitioners, Frank J. Cocozzo and Mary P. Cocozzo, 155 Saratoga Avenue, Mechanicville, New York 12118, 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. 26389).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on August 16, 1982 at 1:15 P.M. Petitioners appeared with Ryan, Brown and Ryan (Thomas E. Ryan, Esq.) The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether \$55,162.31 deposited by petitioners in a bank account in 1975 constitutes unreported income subject to New York State personal and unincorporated business taxes.

FINDINGS OF FACT

1. Petitioners, Frank J. Cocozzo and Mary P. Cocozzo, timely filed a joint New York State Income Tax Resident Return for 1975. Attached to said return was an Unincorporated Business Tax Return and two Federal Schedules "C", Profit or (Loss) from Business or Profession. One Federal Schedule "C" reported

business income of \$233.99 from snowmobile sales and the other schedule reported business income of \$6,417.78 from a service station.

2. On November 16, 1978, the Audit Division issued a Statement of Audit Changes to petitioners for the year 1975 proposing personal income tax of \$7,110.52, unincorporated business tax of \$2,849.77, penalty pursuant to section 685(b) of \$498.00 and interest. The Statement of Audit Changes was issued as a result of a field audit which increased business receipts by \$55,162.31 per a bank deposit method of audit. On February 23, 1979 the Audit Division issued a Notice of Deficiency against petitioners for the year 1975 asserting additional tax of \$9,960.29, plus penalty and interest of \$2,898.68 for a total due \$12,858.97.

3. In 1959, petitioner Frank J. Coccozzo leased an Exxon service station in Mechanicville, New York from Exxon Company, USA (Exxon). Besides selling gasoline, he sold tires and batteries and he repaired cars at the station. In September 1974, the service station sustained serious damage to the interior as a result of a fire. After the fire and until the service station was repaired, Mr. Coccozzo sold only gasoline.

4. Exxon planned to rebuild the service station and to continue to lease it. However, after numerous discussions with Mr. Coccozzo, they advised him that if he were interested in buying the property, they would consider an offer. When Mr. Coccozzo showed an interest in buying the station, Exxon notified him that they preferred he not obtain a mortgage for the purchase because this would cause time delays. He in turn notified them that he would see if he could obtain the money without bank financing.

5. In order to raise the money needed for the purchase, petitioner Frank J. Coccozzo discussed the matter with his family, in particular with his

mother. As a result of the discussion Mr. Cocozzo entered into an agreement with Exxon whereby he would purchase the service station for \$55,000.00.

6. On February 25, 1975, Mr. Cocozzo deposited \$52,000.00 into a bank account held jointly with his wife. On March 3, 1975 a certified check in the amount of \$52,250.00 payable to Exxon Corporation was drawn on the account of Cocozzo Exxon Service. On March 4, 1975, Mr. Cocozzo attended the closing for the purchase of the service station. The closing statement indicated the seller was due \$55,081.78, Mr. Cocozzo made a downpayment of \$2,750.00 and the balance was paid with a certified check for \$52,250.00, and a check for \$81.78 drawn on the account of Cocozzo Exxon Service.

7. As a result of the Notice of Deficiency petitioners filed a petition to which they attached an affidavit. The affidavit stated in part that Theresa M. Cocozzo, mother of Frank J. Cocozzo, loaned her son the sum of \$58,000.00 in May and June, 1975 and said loan was made to enable her son to purchase and make improvements to the service station he operates. The affidavit was signed by Theresa M. Cocozzo on May 7, 1979. On May 1, 1981, the affidavit was amended to correct an error in that she loaned the money in February and June, 1975 and not in May and June, 1975.

8. Petitioner Frank J. Cocozzo obtained \$58,000.00 from Mrs. Theresa M. Cocozzo (his mother) and her two sisters. The petitioners mother and her two sisters each contributed \$20,000.00 of which \$52,000.00 was given to Frank J. Cocozzo in February and another \$6,000.00 was given to him in June for repairs to the station. Mrs. Theresa M. Cocozzo held the remaining \$2,000.00. There was no written loan agreement between petitioner Frank J. Cocozzo and his mother or his aunts showing the terms of the loan, such as the method or time for making repayment of the loan.

9. Mrs. Theresa M. Cocozzo's husband (petitioner Frank J. Cocozzo's father) died in 1948 and he left her an estate of \$35,000.00. Petitioner Frank J. Cocozzo's brother borrowed \$10,000.00 from his mother in 1969 and repaid the loan in three and one-half years.

10. The petitioners have arranged to repay the \$58,000.00 loan by depositing monies into several saving certificate accounts in favor of their children and/or petitioner, Mary P. Cocozzo. It was understood by all parties to the loan that the saving certificate accounts would be turned over to petitioner's mother and aunts upon their request.

CONCLUSIONS OF LAW

A. That the petitioners, through their testimony and documentary evidence and through the testimony and sworn statements of the witnesses, have sustained their burden of proof in explaining that bank deposits of \$55,162.31 were from nontaxable sources.

B. That the petition of Frank J. Cocozzo and Mary P. Cocozzo is granted and the Notice of Deficiency dated February 23, 1979 is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 17 1983


PRESIDENT


COMMISSIONER


COMMISSIONER