

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Vincent P. Dalla  
and Betty M. Dalla

:

:

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 :  
Years 1975 & 1976.

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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Vincent P. Dalla and Betty M. Dalla the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Vincent P. Dalla  
and Betty M. Dalla  
Route 69  
Oriskany, NY 13424

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  
11th day of February, 1983.

David Parchuck

Annice A. Depaulis

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Vincent P. Dalla :  
and Betty M. Dalla :

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of a Determination or a Refund of Personal Income  
& UBT under Article 22 & 23 of the Tax Law for the:  
Years 1975 & 1976.

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 11th day of February, 1983, he served the within notice of Decision by certified mail upon James M. Kernan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James M. Kernan  
1310 Utica St.  
Oriskany, NY 13424

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  
11th day of February, 1983.

David Parchuck

James A. Hayden

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

February 11, 1983

Vincent P. Dalla  
and Betty M. Dalla  
Route 69  
Oriskany, NY 13424

Dear Mr. & Mrs. Dalla:

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  
James M. Kernan  
1310 Utica St.  
Oriskany, NY 13424  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
VINCENT P. DALLA and BETTY M. DALLA	:	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 Years 1975 and 1976.	:	

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Petitioners, Vincent P. Dalla and Betty M. Dalla, Route 69, Oriskany, New York 13424, 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 years 1975 and 1976 (File Nos. 25559 and 25647).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on June 15, 1981 at 11:30 A.M. Petitioner Vincent P. Dalla and Betty M. Dalla appeared with James M. Kernan, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether petitioner's are entitled to claim two dependency exemptions for 1975 and 1976.

II. Whether the Audit Division properly determined the petitioners' personal income and unincorporated business tax liability for the years 1975 and 1976 as the result of a field audit.

FINDINGS OF FACT

1. Petitioners, Vincent P. Dalla and Betty M. Dalla, timely filed New York State income tax resident returns for 1975 and 1976. Petitioner Vincent

P. Dalla also timely filed New York State unincorporated business tax returns for 1975 and 1976.

2. Petitioner Vincent P. Dalla owns and operates a Gulf service station in Oriskany, New York. The books and records are single entry and income and expense are reported on a cash basis. Petitioner Vincent P. Dalla used a ten column pad to record everyday sales since he had no cash register. All cash received was kept in his pocket.

3. Initially, an indirect audit method (source and application of funds) was applied by the Audit Division and resulted in a small understatement of income. Thereafter, another audit approach was used in analyzing gross sales. A mark-up was done on oil and parts. The gasoline sales were projected by gallons purchased times the selling prices. This audit method revealed a substantial understatement of income. On July 7, 1978, based on the gross sales analysis audit, the Audit Division issued a Statement of Audit Changes asserting additional personal income tax of \$937.82, and unincorporated business tax of \$459.03 for tax years 1975 and 1976, plus interest. Subsequently, on November 13, 1978, two notices of deficiency were issued. One reflected the personal income tax determined for 1975 and 1976 of \$937.82 plus updated interest and the other reflected the unincorporated business tax determined for 1975 and 1976 of \$459.03 plus updated interest.

4. At the hearing the petitioners raised the issue regarding dependency exemptions. Petitioners argued that they were entitled to claim two additional exemptions for the children of petitioner Betty M. Dalla who lived with them throughout the years in issue. They provided over one half of the childrens support and Betty M. Dalla's ex-husband provided \$520.00 per year for each child.

5. Based on the hearing and the audit work papers presented, in order for the audit to be valid the following must be considered:

(a) The audit work papers had a \$1,000.00 error in addition for 1975 which overstated petitioner's income for that year.

(b) The income from New York State inspection fees must be reduced by \$1,495.25 and \$719.00 for 1975 and 1976 respectively, since petitioners have shown that not all inspection stickers were used and the exact mark-up for each inspection sticker could be determined.

(c) An adjustment of \$4,329.90 was made by the Audit Division to increase the audited gasoline sales thereby including gasoline delivered in 1974 but sold in 1975. However the following adjustments were not made for other periods under audit.

(i) An adjustment of \$1,811.39 to decrease audited gasoline sales for 1975 thereby excluding gasoline delivered in 1975 but sold in 1976.

(ii) An adjustment to increase audited gasoline sales for 1976 by \$1,811.39, and another adjustment of \$1,946.72 to decrease audited gasoline sales for 1976 thereby excluding gasoline delivered in 1976 but sold in 1977.

(iii) An adjustment decreasing audited gasoline sales by \$567.36 for 1976 for purchases withdrawn for personal use. (It is noted no claim was made for 1975 by petitioners).

(d) An adjustment must be made to increase cost of goods sold for 1976 so as to reflect what the Audit Division found to be additional cost of products sold in that year.

The above adjustments would reduce the understatement of income on the audit work papers for 1975 and 1976.

6. Petitioner Vincent P. Dalla operated a self-service and full-service gasoline and repair service station. During the years at issue, the petitioner contracted out automobile repairs at his station to friends who had the skills to repair cars. These repairmen were paid for their services in kind, in that

the petitioner transferred material (parts and oil) which he had in his inventory to the repairmen. This transfer of inventory which constituted the cost of repairmen's services was not deducted on petitioner's return since petitioner already deducted the cost of the inventory as a business expense.

The petitioner suffered pilferage from the operation of his self-service gas station as the pumping of gas during this period was not properly supervised.

Gasoline and repair parts were used by petitioner on his business vehicles. Petitioner also sold parts from his inventory to friends and relatives at his cost.

The above facts would also require an adjustment for the reduction of the understatement of income for 1975 and 1976.

#### CONCLUSIONS OF LAW

A. That the burden of proof is upon petitioners to show where the audit was incorrect. (Section 689(e) of the Tax Law). Petitioners have sustained their burden of proof to show that there was no understatement of income for 1975 and 1976.

B. That petitioners, Vincent P. Dalla and Betty M. Dalla are entitled to dependency exemptions for the children of Betty M. Dalla, under section 152(e)(1)(B) of the Internal Revenue Code and pursuant to section 616 of the New York State Tax Law.

C. That in light of Conclusion of Law "A", the two notices of deficiency issued on November 13, 1978 are cancelled. That in light of Conclusion of Law

"B", petitioners are to be granted a refund plus any interest allowable by law resulting from the two additionally allowed personal exemptions for tax years 1975 and 1976.

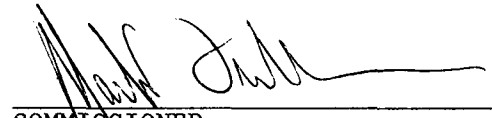
DATED: Albany, New York

STATE TAX COMMISSION

FEB 11 1983

  
ACTING PRESIDENT

  
COMMISSIONER

  
COMMISSIONER