

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Thomas B. Golden :

: 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 & 1977.

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Thomas B. Golden, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas B. Golden
15 Highwood Dr.
Guilford, CT 06437

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
6th day of May, 1983.

David Parchuck

James A. Hayland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Robert T. Gradoville the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert T. Gradoville
Bergman, Horowitz, & Reynolds
900 Chapel St., P.O. Box 426
New Haven, CT 06510

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
6th day of May, 1983.

David Parchuck

Francis A. Hagelund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Thomas B. Golden
15 Highwood Dr.
Guilford, CT 06437

Dear Mr. Golden:

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 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
Robert T. Gradoville
Bergman, Horowitz, & Reynolds
900 Chapel St., P.O. Box 426
New Haven, CT 06510
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
THOMAS B. GOLDEN	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1976 and	:	
1977.	:	

Petitioner, Thomas B. Golden, 15 Highwood Drive, Guilford, Connecticut 06437, 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 and 1977 (File No. 29716).

On October 19, 1981, petitioner advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUES

I. Whether petitioner is liable for penalties asserted pursuant to section 685(a)(1) and (a)(2) of the Tax Law for failure to file a New York personal income tax return and pay the tax shown due thereon.

II. Whether petitioner is liable for a penalty asserted pursuant to section 685(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Thomas B. Golden, was a resident of and resided in the State of Connecticut during 1976 and 1977. He did not file New York State income tax nonresident returns for said years.

2. On October 29, 1979, the Audit Division issued a Statement of Audit Changes proposing additional tax due of \$8,925.35, penalties, pursuant to

section 685(a)(1), 685(a)(2), 685(b), and 685(c) of the Tax Law of \$3,961.09 and interest of \$1,520.81 for a total sum of \$14,407.25. Said statement was issued on the grounds that the wages paid to petitioner by his New York State employer were subject to New York State personal income tax and that petitioner failed to file a New York State income tax return and pay the tax due thereon. Accordingly, on April 4, 1980, a Notice of Deficiency was issued.

3. After the Notice of Deficiency was issued, petitioner submitted documentation which showed that he was entitled to an allocation of his New York wages based on the number of days worked within and without New York State. A recomputation allowing such allocation resulted in personal income tax due of \$881.20 for 1976 and \$893.07 for 1977. Petitioner has agreed to the recomputed personal income tax portion of the deficiency and has withdrawn his petition with respect thereto. In addition, penalty asserted under section 685(b) of the Tax Law was eliminated. The only items which remain at issue are the penalties asserted pursuant to section 685(a)(1), 685(a)(2) and 685(c) of the Tax Law.

4. Petitioner, who was employed by General Sporting Goods Corporation (General) of Lansing, New York, stated that he did not file New York State income tax returns because "Based upon the fact that my employment required me to spend substantial portions of my time working outside of the State of New York, and given the level of personal exemptions and itemized deductions, I believed I would have no income tax liability to the State of New York".

5. Petitioner contended that, in early 1976, he consulted with a Mr. Charles Canning, the controller of General Sporting Goods Corporation, whose responsibilities included the filing of corporate income tax returns and all payroll tax returns. Mr. Canning, also a nonresident of New York State, informed

petitioner that he would have no income tax liability to New York given the amount of his personal exemptions, itemized deductions and the fact that he was required to spend substantial portions of his time outside New York State. Petitioner contended that based on the above his failure to file New York personal income tax returns was due to reasonable cause and not willful neglect or intentional disregard of the rules and regulations. Therefore, the penalties should be waived.

6. Petitioner received wages from General in the amount of \$41,462.00 for 1976 and \$45,185.00 in 1977. He worked in New York State a total of 172 days in 1976 and a total of 164 days in 1977. Copies of petitioner's 1976 and 1977 Federal income tax return showed that four exemptions were claimed for each of the years in issue and that petitioner reported federal itemized deductions in the amount of \$10,144.00 for 1976 and \$14,162.29 for 1977.

CONCLUSIONS OF LAW

A. Petitioner, Thomas B. Golden, has not established that his failure to file New York State income tax returns and pay the tax due thereon for the years 1976 and 1977 was due to reasonable cause and not willful neglect. Petitioner's contentions as stated in Finding of Fact "5" supra are without merit since his New York income for the years at issue was in excess of the sum of his total Federal exemptions and itemized deductions. Accordingly, the penalties asserted pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are sustained.

B. Petitioner failed to sustain his burden of proof imposed by section 689(e) of the Tax Law in establishing that he was not required to make a declaration of his estimated tax for 1976 and 1977 pursuant to section 655 of the Tax Law.

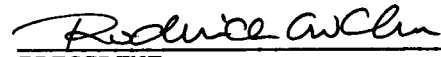
C. That the Audit Division is hereby directed to modify the Notice of Deficiency issued on April 4, 1980, to the extent provided for in Finding of Fact "3". Penalties asserted under section 685(a)(1), (a)(2), and (c) of the Tax Law are also to be recomputed based on the correct amount of tax.

D. That the petition is granted to the extent indicated in Conclusion of Law "C" and except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

MAY 06 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER