

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frank & Domenica Lucente :
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. :

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 11th day of May, 1983, he served the within notice of Decision by certified mail upon Frank & Domenica Lucente, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank & Domenica Lucente
1551 Sweetman Ave.
Elmont, NY 11003

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 May, 1983.

David Parchuck

Connie A. Hapland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 11, 1983

Frank & Domenica Lucente
1551 Sweetman Ave.
Elmont, NY 11003

Dear Mr. & Mrs. Lucente:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK LUCENTE AND DOMENICA LUCENTE	:	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.	:	

Petitioners, Frank Lucente and Domenica Lucente, 1551 Sweetman Avenue, Elmont, New York 11003, 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 No. 30808).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 14, 1982 at 9:15 A.M. Petitioner Frank Lucente appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether certain adjustments made as the result of a field audit were proper.

FINDINGS OF FACT

1. Frank Lucente and his wife, Domenica Lucente, timely filed a joint New York State Income Tax Resident Return for each of the years 1975 and 1976 whereon Frank Lucente (hereinafter petitioner) reported business income of \$23,362.38 and \$15,523.45 respectively, derived from his activities as a "waste paper dealer". Additionally, petitioner filed New York State unincorporated

business tax returns for the years at issue whereon he reported the income and expenses attributable to his aforestated business activities.

2. On July 11, 1979 the Audit Division issued a Statement of Audit Changes to petitioners wherein, pursuant to schedules of audit adjustments attached thereto, the following adjustments were made:¹

ITEM	CLAIMED	1975 ALLOWED ON AUDIT	ADJUSTMENTS	
			PERSONAL INCOME	UNINCORPORATED BUSINESS
Insurance	\$ 5,354.00	\$2,518.00	\$ 2,836.00	\$ 2,836.00
Sundry Expenses	10,447.00	7,447.00	3,000.00	3,000.00
Telephone	1,180.00	708.00	472.00	472.00
Light, Heat & Power	1,501.00	501.00	1,000.00	1,000.00
Entertainment, Tolls & Tips	5,164.65	1,164.65	4,000.00	4,000.00
Allowance for Taxpayer Services				(407.00)
Medical Adjustment (Statutory)			452.00	
Total Adjustment			<u>\$11,760.00</u>	<u>\$10,901.00</u>

ITEM	CLAIMED	1976 ALLOWED ON AUDIT	ADJUSTMENTS	
			PERSONAL INCOME	UNINCORPORATED BUSINESS
Insurance	\$ 7,104.44	\$3,223.44	\$3,881.00	\$3,881.00
Entertainment, Tolls & Tips	4,100.79	2,100.79	2,000.00	2,000.00
Telephone	1,933.57	1,160.57	773.00	773.00
Light, Heat & Power	1,869.78	623.78	1,246.00	1,246.00
Sundry Expenses	13,325.92	5,325.92	8,000.00	8,000.00
Allowance for Taxpayer Services				(1,975.00)
Keogh Deduction			72.00	
Medical Adjustment (Statutory)			477.00	
Total Adjustment			<u>\$16,449.00</u>	<u>\$13,925.00</u>

All adjustments to business expenses were made on the basis that such amounts "are not ordinary and necessary business expenses".

¹ Amounts claimed were pursuant to the audit workpapers for 1975 and petitioner's unincorporated business tax return for 1976.

3. On June 20, 1980 the Audit Division issued a Notice of Deficiency against petitioners for the years 1975 and 1976² asserting personal income tax of \$2,892.01, unincorporated business tax of \$1,405.30, plus penalty and interest of \$1,409.66, for a total due of \$5,706.97. Said penalty was asserted pursuant to section 685(c) of the Tax Law for underpayment of estimated taxes.

4. A Consent Fixing Period of Limitation Upon Assessment of Personal Income And Unincorporated Business Taxes was executed by petitioners, thereby extending the period for assessing such taxes for 1975 and 1976 to April 15, 1981.

5. During the years at issue petitioner was engaged in activities as a waste paper dealer. He owned a tractor trailer which was used to pick up waste paper from his accounts and transport same to various purchasing paper mills. Petitioner's office was located at his personal residence. He testified that he ran the office while someone else drove his truck.

6. During the hearing petitioner conceded the adjustments to insurance of \$2,836.00 for 1975 and \$3,881.00 for 1976.

7. Petitioner submitted a schedule listing his purported expenditures for entertainment, tolls and tips. Said schedule, which was untimely drawn, was prepared from petitioner's records of purchases and sales. The entertainment expenses listed were estimates based on his recall. No supporting documentary evidence was submitted with respect to such entertainment. Claimed toll expenses were not supported by toll receipts.

8. Petitioner offered no pertinent testimony or documentary evidence with respect to the other audit adjustments at issue herein.

² Although the Notice of Deficiency stated 1975 as the period at issue, the taxes asserted thereon were for both 1975 and 1976.

CONCLUSIONS OF LAW

A. That petitioner has failed to sustain his burden of proof, required pursuant to sections 689(e) and 722 of the Tax Law, to show that he is properly entitled to greater deductions for the expense items at issue than those allowed on audit. Accordingly, all adjustments made for the years at issue herein are sustained.

B. That the petition of Frank Lucente and Domenica Lucente is denied and the Notice of Deficiency dated June 20, 1980 is hereby sustained together with such additional penalty and interest as may be lawfully owing.

DATED: Albany, New York

MAY 11 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER