

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Gary Mirsky	:	
& Lili Mirsky, a/k/a Lili Dajani	:	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	:	
1970 - 1974.	:	

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 4th day of February, 1983, he served the within notice of Decision by certified mail upon Gary Mirsky & Lili Mirsky, a/k/a Lili Dajani, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gary Mirsky
& Lili Mirsky, a/k/a Lili Dajani
c/o Martin H. Ginsberg
1325 Franklin Ave., Suite 101
Garden City, NY 11530

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
4th day of February, 1983.

David Parchuck

James P. Hughes

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Gary Mirsky	:	
& Lili Mirsky, a/k/a Lili Dajani	:	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	:	
1970 - 1974.	:	

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 4th day of February, 1983, he served the within notice of Decision by certified mail upon Martin H. Ginsberg the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Martin H. Ginsberg
1325 Franklin Ave., Suite 101
Garden City, NY 11530

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
4th day of February, 1983.

David Parchuck

James P. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

February 4, 1983

Gary Mirsky
& Lili Mirsky, a/k/a Lili Dajani
c/o Martin H. Ginsberg
1325 Franklin Ave., Suite 101
Garden City, NY 11530

Dear Mr. & Mrs. Mirsky:

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
Martin H. Ginsberg
1325 Franklin Ave., Suite 101
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GARY MIRSKY AND LILI MIRSKY	:	DECISION
a/k/a LILI DEJANI	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1970 through	:	
1974.	:	

Petitioners, Gary Mirsky and Lili Mirsky, 4260 Cedros, Sherman Oaks, California 91407, 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 1970 through 1974 (File No. 22333).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 14, 1981, and continued to conclusion on May 11, 1982. Petitioners appeared by Martin H. Ginsberg, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Michael Gitter, Esq., of counsel).

ISSUES

I. Whether petitioners were domiciled in and residents of New York State during the taxable years 1970 and 1971.

II. Whether a net worth analysis of petitioners' assets performed by the Audit Division was a proper audit procedure.

III. Whether certain expense payments made on petitioner Lili Mirsky's behalf by corporations with which she was associated were additional income or loan repayments.

IV. Whether a casualty loss claimed in 1972 as the result of a burglary was properly disallowed.

FINDINGS OF FACT

1. On April 14, 1978, as the result of a field audit, the Audit Division issued a Notice of Deficiency against petitioners Gary Mirsky and Lili Mirsky, a/k/a Lili Dajani in the amount of \$38,832.90 plus interest of \$13,788.54 and penalty of \$11,371.60 for a total due of \$63,993.04 for the years 1970 through 1974.

2. For the years in issue, petitioners filed joint Federal tax returns indicating a home address of 2775 Angelo Drive, Los Angeles, California 90024. Petitioners filed no New York State Income Tax Returns for 1970 and 1971. During the years 1972 through 1974 petitioners filed nonresident New York returns indicating the aforesaid California address as their residence.

3. Petitioners were married in 1966. In 1969 petitioner Gary Mirsky was sent to Civil Jail in New York City on charges of being in arrears on alimony payments to a former wife. Petitioner Lili Mirsky requested a New York Supreme Court Justice to release her husband so he could support her and her children as well as his ex-wife and children. The judge released Gary Mirsky to enable him to seek work as a musician in order to support his wife and children and pay his alimony obligations.

4. Petitioner Lili Mirsky claimed that she and Gary and the children moved to California following Gary's release so that Gary could avoid making alimony payments and that Gary has never returned to New York for fear of being arrested. However, Lili did not become a United States citizen until May, 1970 and the immigration records indicated that she became a citizen in New York. Moreover, petitioner Lili Mirsky's address according to the immigration records

was 628 Beverly Road, Brooklyn, New York during the spring of 1970. Petitioners' children and Lili Mirsky's children by a prior marriage, however, were enrolled in California schools during the period in issue. The home address listed for the children in the school records was 819 South Holt Street, Los Angeles, California for the years 1970 and 1971.

5. In 1972 petitioner Lili Mirsky purchased shares in a co-operative apartment on Sutton Place in New York City. The children remained in California and during 1972, 1973 and 1974 Mrs. Mirsky commuted between New York and California every 10 to 14 days due to business investments she had made in New York City. No credible evidence was produced indicating petitioner Gary Mirsky's location during the period. For the years 1972 through 1974 petitioners filed nonresident New York returns based on Lili Mirsky's New York business income. At the time of the hearing petitioners were living separate and apart without any type of separation agreement or court decree.

6. On audit, the Audit Division determined that, based on Lili Mirsky's immigration records, she was a resident domiciliary of New York during the years 1970 and 1971. Since petitioner Lili Mirsky had requested her husband's release from jail in 1969 because she needed him to support her and her children and then in 1972 had large amounts of assets, the Audit Division decided to perform a net worth analysis. The auditor determined that at the beginning of 1970, based on Lili's statements to the judge, petitioners had no assets. The auditor further determined that, based on Lili's investments in two New York corporations totalling \$146,133.67, purchase of a house in California for \$72,000.00 and purchase of shares in the co-operative apartment in New York for \$25,000.00, petitioners had assets of \$243,133.67 at the beginning of 1972. The auditor offset a \$52,200.00 mortgage on the California house against the

assets and arrived at a net worth of \$190,933.67. Since the auditor had determined that at the beginning of 1970 petitioners had no assets, he applied the entire \$190,933.67 as income received during 1970 and 1971 and divided the total amount between the two years.

7. Petitioner Lili Mirsky claimed that the monies invested in residences and businesses in 1972 did not come from income sources but rather came from a \$280,000 loan from a friend of her family. Petitioners produced a statement witnessed by the United States vice consul in Zurich, Switzerland on May 3, 1977 stating that one Charles Khoury had loaned Lili Dajani \$280,000.00 on July 2, 1971 to be repaid by July 2, 1976 which repayment was extended to July 2, 1978. Petitioners did not produce any original promissory notes, evidence of repayments, or any other evidence indicating that such a loan occurred.

8. Petitioners also contended that during the years 1970 and 1971 they were not residents of New York State. Petitioner Lili Mirsky could not show, however, why she had a Brooklyn address listed with the Immigration Service during this period and, except for the children's school records, no other evidence of a California residence such as leases, cancelled checks on California tax returns were introduced into evidence. Petitioners' representative stated that he had lost all of petitioners' California tax returns for the period in issue.

9. From 1972 through 1974, V.E. Realty, Inc. and Central Womens Center, two New York corporations in which Lili Mirsky had invested, made payments on behalf of Mrs. Mirsky for her personal expenses. On audit, the Audit Division summarized these expenses and offset against them amounts repaid by the corporations

for loans made by Mrs. Mirsky. The remaining amount, totalling \$77,644.95 was attributable to additional salary income to Lili Mirsky.

10. Petitioners argued that all of the expense payments made by the corporations were for loan repayments and should be so credited. Petitioners, however, presented no documentation in any form which would substantiate the aforesaid claim.

11. Sometime during 1972 petitioner Lili Mirsky's New York apartment was burglarized and an undisclosed amount of jewelry was taken. On December 23, 1972 an unknown male returned a package with some \$40,000 worth of the stolen jewelry. Mrs. Mirsky reported this incident to the police. Sometime after the jewelry's return another burglary of Mrs. Mirsky's apartment occurred and jewelry was again taken. Mrs. Mirsky submitted to the police a list of the jewelry which she claimed was stolen, estimating the loss to be approximately \$60,000.00.

12. On their 1972 Federal tax returns petitioners claimed a casualty loss deduction of \$112,000.00 which amount allegedly included losses from both thefts. On an amended Federal return petitioners reported that \$4,000.00 from the first theft was returned rather than the \$40,000.00 that was reported to the police as being returned. The Audit Division totally disallowed the casualty loss deduction on the New York State nonresident return as being unsubstantiated.

13. Petitioners maintained that the alleged \$60,000.00 loss from the last burglary should be allowed since this jewelry was never returned. No substantiation of the amount of loss was produced at the hearing other than Mrs. Mirsky's estimate which she admitted was not reflective of the true value. A jeweler's appraisal of jewelry totally unrelated to the stolen jewelry was submitted by

petitioners' representative in the mistaken belief that it was an appraisal of the stolen jewelry. No other evidence was submitted relating to the casualty loss disallowance.

14. According to petitioners' representative the Internal Revenue Service had accepted the casualty loss following an audit of the 1972 Federal return.

CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law provides that, with certain exceptions not herein applicable, the burden of proof is upon the petitioners to overcome the deficiency.

B. That inasmuch as petitioners failed to produce sufficient evidence to show that they were residents of California for the years 1970 and 1971, they did not meet their burden of proof and were properly determined to be residents of New York during this period.

C. That because petitioners could not show by adequate evidence that their assets at the beginning of 1970 were other than zero and that their assets at the end of 1971 were obtained other than as ordinary income, they failed to meet their burden of proving that the net worth analysis performed by the Audit Division was erroneous or improper.

D. That since petitioner Lili Mirsky could not prove that the expense payments made on her behalf by the New York corporations she was associated with were loan repayments she did not meet her burden of proof and said payments were properly determined to be additional income.

E. That although section 684(f) of the Tax Law provides that "evidence of a federal determination relating to issues raised in a case before the tax commission..." is admissible, such determinations are not binding on the Tax Commission which may conduct an independent audit thereon (20 NYCRR 153.4).

Therefore, the Audit Division was not required to accept the findings of the Internal Revenue Service with respect to the casualty loss deduction and, inasmuch as petitioners failed to adequately substantiate the amount of jewelry alleged to have been stolen, the Audit Division properly disallowed the deduction.

F. That the petition of Gary Mirsky and Lili Mirsky, a/k/a Lili Dajani is denied and the Notice of Deficiency issued April 14, 1978 is sustained.

DATED, Albany, New York

FEB 04 1983

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER