

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sebastian & Theresa Pace :
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 Year :
1973. :
AFFIDAVIT OF MAILING

State of New York
County of Albany

Kathy Pfaffenbach, 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 10th day of January, 1983, he served the within notice of Decision by certified mail upon Sebastian & Theresa Pace, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sebastian & Theresa Pace
261 Stan Hope St., #2L
Brooklyn, NY 11237

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
10th day of January, 1983.

Kathy Pfaffenbach

Jean O. Schatz
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

January 10, 1983

Sebastian & Theresa Pace
261 Stan Hope St., #2L
Brooklyn, NY 11237

Dear Mr. & Mrs. Pace:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SEBASTIAN and THERESA PACE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1973.	:	

Petitioners, Sebastian and Theresa Pace, 261 Stanhope Street, Apartment 2L, Brooklyn, New York 11237, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 23497).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 21, 1981 at 1:45 P.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq., (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner Sebastian Pace sustained his burden of proving the offset of his gambling winnings by his gambling losses.

FINDINGS OF FACT

1. Petitioners, Sebastian Pace and Theresa Pace, timely filed their 1973 IT-201 New York State Income Tax Resident Return and their 1973 1040 U.S. Individual Income Tax Return. On both returns, Sebastian's occupation was listed as longshoreman and Theresa's was listed as housewife.

2. Two successive consents extending the period of limitation for assessment through April 15, 1979, were validated February 23, 1977 and October 21, 1977.

3. On February 14, 1977 and on April 4, 1978, the Audit Division issued respectively a Statement of Audit Changes and a Notice of Deficiency against petitioners imposing additional income tax liability for the tax year 1973.

4. The Statement of Audit Changes stated as follows:

"Since you failed to submit the information requested, gambling losses claimed in amount of \$98,204.40 are disallowed. As a result of this disallowance your return is being adjusted as follows:

Total Income Per Federal Return		\$104,047.27
Less: State Income Tax Refund		<u>145.90</u>
Total New York Income		\$103,901.37
Less: Standard Deduction	\$2,000.00	
Exemptions (5)	<u>3,250.00</u>	<u>5,250.00</u>
New York Taxable Income		<u>\$ 98,651.37</u>
Tax on Above		\$ 13,107.71
Tax Previously Stated		<u>40.04</u>
Additional Personal Income Tax		\$13,067.67"

5. During the year in issue, petitioner Sebastian Pace derived gross income from various sources. One source was gambling winnings from wagering on horse races.

6. The total amount of horse race winnings reported for the year 1973 was \$98,204.40. Against this sum, petitioners assert gambling losses totaling \$98,204.40.

7. On June 13, 1975, petitioners submitted their losing betting tickets to the Audit Division for examination. These tickets reflected losses in excess of the amount claimed on petitioners return. The examination of the losing tickets revealed batches of clean tickets, with successive serial numbers, of bets placed on the same horse(s) in the same race. Bets were placed at off-track-betting locations and at several different race tracks.

CONCLUSIONS OF LAW

A. That petitioners have sustained their burden of proof required by section 689(e) of the Tax Law in establishing that gambling losses were incurred to the extent of winnings.

B. That the petition of Sebastian Pace and Theresa Pace is granted and the Notice of Deficiency issued on April 4, 1978, is cancelled.

DATED: Albany, New York

JAN 10 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER