

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Herman Teich	: : :	: : :
		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 Year 1975.	: : : :	

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 Herman Teich, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Herman Teich
Kings Point Seville H185
Del Ray Beach, FL 33446

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

Conner A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Herman Teich :
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 Year 1975. :
:

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 Stanley E. Beck the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley E. Beck
600 Old Country Rd.
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
6th day of May, 1983.

David Parchuck

Constance A. Harland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Herman Teich
Kings Point Seville H185
Del Ray Beach, FL 33446

Dear Mr. Teich:

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
Stanley E. Beck
600 Old Country Rd.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
HERMAN TEICH	:	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 Year 1975.	:	

Petitioner, Herman Teich, Kings Point Seville H185, Del Ray Beach, Florida 33446, 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 year 1975 (File No. 27405).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 15, 1982 at 9:15 A.M., with all briefs to be submitted by December 8, 1982. Petitioner appeared by Stanley E. Beck, C.P.A. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined that petitioner had additional receipts from the operation of his unincorporated plumbing business.

FINDINGS OF FACT

1. Petitioner, Herman Teich, timely filed a New York State Income Tax Resident Return for the year 1975. He filed separately on the same return with his wife, Beatrice Teich, and reported "Total New York Income" of \$20,718.00.

2. Petitioner timely filed an unincorporated business tax return for 1975 showing "net profit from business" of \$14,552.00. Petitioner's United States

Form 1040, Schedule C for 1975 shows net profit of \$14,552.00 on gross receipts of \$301,897.00 from petitioner's unincorporated plumbing business.

3. On April 13, 1979, the Audit Division issued a Notice of Deficiency for the 1975 taxable year against petitioner showing a deficiency of \$5,517.42 in personal income tax and unincorporated business tax.

4. Attached to the Notice of Deficiency described in Finding of Fact "3" was a Statement of Audit Changes showing the following:

Unincorporated Business Tax Computation

Taxable business income reported	\$ 6,355.00
Add: additional receipts per audit	27,938.00
Balance	\$34,293.00
Less: additional allowance for taxpayer's services	2,161.00
Adjusted taxable business income	\$32,132.00
Tax on amount	\$ 1,767.26
Tax shown on return	299.41
Additional unincorporated business tax	\$ 1,467.85

Personal Income Tax Computation

New York taxable income reported	\$16,204.00
Add: adjustment	27,938.00
New York taxable income adjusted	\$44,142.00
Tax on amount	\$ 4,931.20
Less: tax shown on return	980.40
Additional personal income tax	\$ 3,950.80
Tax surcharge 2½%	98.77

The following explanation was provided: "As the result of audit for the above indicated year, your unincorporated business and personal income tax liability is being adjusted to reflect unsubstantiated savings deposits and capital contribution to business exceeding available income".

5. The alleged deficiency was based upon an examination of petitioner's books and records for his unincorporated plumbing business as well as his personal bank accounts. Petitioner's income was reconstructed by a bank

deposit analysis and a source and application of funds audit. The Audit Division determined that the business had additional gross receipts of \$27,938.00.

6. The Audit Division, after the issuance of the Notice of Deficiency, supra, revised its reconstruction of petitioner's income and decreased the \$27,938.00 previously determined as additional gross receipts to \$24,182.37. The auditor testified that "(W)e reviewed a lot of bankbooks and took into account everything, stock sales and dividend income that Mr. Beck submitted. All of that was reviewed and there is still some \$24,000.00 or so for which no substantiation as to source was submitted."

7. The additional gross receipts of \$24,182.37 was determined as follows. First, a bank deposit analysis was performed.

Total Bank Deposits		\$323,281.85
Less: Non-Business Deposits ¹		<u>16,544.00</u>
Deposits from business receipts		\$306,737.85
Expenses per return		
Purchases	\$114,288.00	
Payroll	110,226.00	
Supplies	1,673.00	
Other (net of depreciation)	<u>62,338.00</u>	
		\$288,525.00
Non-Business expenses		
Total drawings	\$ 26,485.00	
Sales tax paid	3,860.00	
Redeposits	<u>684.00</u>	
		\$ 31,029.00
Total expenses		<u>319,554.00</u>
Less: expenses paid by check		<u>315,703.22</u>
Business Expenses paid by cash		\$ 3,850.78

¹ Consisting of redeposits	\$ 684.00
sales tax collected	3,860.00
capital contribution	<u>12,000.00</u>
	\$16,544.00

A source and application of funds audit was then performed.

Application of funds

Deposits to savings accounts	\$58,865.66
Estimate of personal living expenses	11,779.00
Capital contributions to business	12,000.00
	<u>\$82,644.66</u>

Source of funds

Cash drawings from business	\$11,660.00
Savings withdrawn and transfers	26,328.66
Dividends	4,400.00
Proceeds from sale of stock	24,765.26
	<u>\$67,153.92</u>

Excess of application of funds over source of funds	\$15,490.74
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The Audit Division then determined petitioner's gross receipts as follows:

Deposits from business receipts	\$306,737.85
Business Expenses paid by cash	3,850.78
Excess of application of funds over sources of funds	15,490.74
	<u>\$326,079.37</u>

Additional gross receipts were computed as follows:

Gross receipts per audit	\$326,079.37
Less: gross receipts per return	301,897.00
Additional gross receipts	<u>\$ 24,182.37</u>

8. Stanley E. Beck, petitioner's representative, at the hearing, herein, was granted permission to submit additional evidence of "bank accounts to show that amounts that were included as deposits were in fact roll-overs of existing accounts." He did not specifically mention that he would submit evidence of gifts and/or loans made by petitioner's mother-in-law, Sylvia Blitz, to petitioner.

9. By a letter dated October 8, 1982, petitioner submitted additional evidence in support of his petition including affidavits of Sylvia Blitz, petitioner's mother-in-law. In an affidavit dated August 9, 1977, she stated

that in 1975 she "gave \$6,000.00 cash to my daughter, Beatrice Teich and my son-in-law, Herman Teich as a gift." In a second affidavit dated August 9, 1977, she stated that she "paid the rentals for 1974 and 1975 for apartment 2F at 30 Magaw Place, New York City where I live with my son-in-law and daughter, Herman and Beatrice Teich." In his letter of October 8, 1982, Mr. Beck also alleged that "(t)he \$12,000.00 of capital contribution to the business was also a loan from Mrs. Blitz who died in February of 1979" and that "(t)he source of the deposit to Bankers Trust Co. Account #70526999 on May 25, 1975 was a transfer of a withdrawal from L.I. Savings Bank Account #9350718 on October 4, 1974 in amount \$5,379.00 plus \$1,000.00 additional cash gifts in 1974." No explanation was provided why petitioner withdrew funds and waited more than seven months to redeposit them in another account. Furthermore, no documentation such as rent receipts in Mrs. Blitz's name, cancelled checks, or a loan agreement was provided to support any of the allegations stated in the affidavits.

CONCLUSIONS OF LAW

A. That pursuant to Tax Law sections 689(e) and 722, the burden of proof is imposed upon petitioner to show that the audit method used by the Audit Division in reconstructing his income for 1975 was inaccurate and/or incorrect. Matter of Robert R. Clark, State Tax Commission, December 14, 1982. Petitioner has failed to show that the revised reconstruction of his income as described in Findings of Fact "6" and "7", supra, was inaccurate and/or incorrect.


B. That the evidence submitted by petitioner after the hearing was completed was inadequate to shoulder his burden of proof.

C. That the Audit Division is directed to modify the Notice of Deficiency, supra, to conform with the findings of the revised audit described in Findings of Fact "6" and "7", supra; and that, in all other respects, the petition is denied.

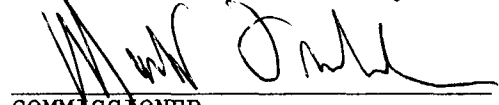
DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER