

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Siegfried & Ligia Vieluf :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Years 1973 - 1976. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

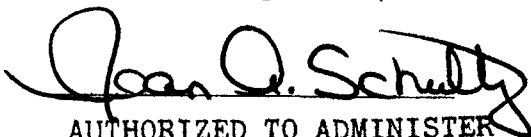
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of September, 1983, she served the within notice of Decision by certified mail upon Siegfried & Ligia Vieluf, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Siegfried & Ligia Vieluf
2063 Amsterdam Ave.
New York, NY 10032

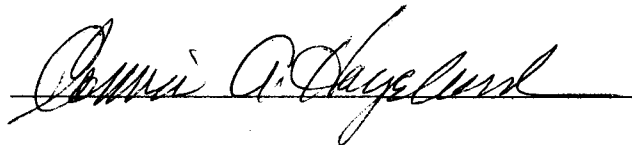
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
16th day of September, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Siegfried & Ligia Vieluf :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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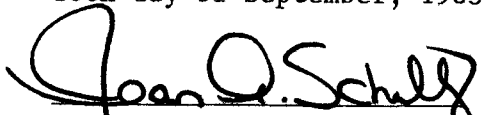
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of September, 1983, she served the within notice of Decision by certified mail upon Bernard I. Birnbaum the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard I. Birnbaum
77 Lowe Lane
Tappan, NY 10983

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
16th day of September, 1983.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

September 16, 1983

Siegfried & Ligia Vieluf
2063 Amsterdam Ave.
New York, NY 10032

Dear Mr. & Mrs. Vieluf:

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 & 1312 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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Bernard I. Birnbaum
77 Lowe Lane
Tappan, NY 10983
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SIEGFRIED VIELUF AND LIGIA VIELUF	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Articles	:	
22 & 30 of the Tax Law for the Years 1973, 1974	:	
1975 and 1976.	:	

Petitioners, Siegfried Vieluf and Ligia Vieluf, 2063 Amsterdam Avenue, New York, New York 10032, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax law for the years 1973, 1974, 1975 and 1976, and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File Nos. 27408 and 27415).

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 November 15, 1982 at 1:15 P.M. with all briefs to be submitted by December 15, 1982. Petitioners appeared by Bernard I. Birnbaum, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Anna Colello, Esq., of counsel).

ISSUE

Whether adjustments attributing additional business income to petitioners for each of the years at issue herein were proper.

FINDINGS OF FACT

1. Siegfried Vieluf and Ligia Vieluf (hereinafter petitioners), filed a combined New York State Income Tax Resident Return (with New York City Personal Income Tax) for the year 1976. For 1975, they filed a joint New York State

Income Tax Resident Return. Both of said returns were filed late. For taxable years 1973 and 1974, there is no record of petitioners having filed New York State returns.

2. On February 27, 1979 the Audit Division issued two statements of audit changes. One such statement was issued to petitioners for the years 1973, 1974 and 1975. The other statement was issued solely to petitioner Siegfried Vieluf for the year 1976. Pursuant to schedules of audit adjustments attached thereto, the 1973 and 1974 deficiencies were computed, "from information available" since the Audit Division's records indicated that no tax returns were filed for said years. The 1975 and 1976 deficiencies were also computed based on "information available" since petitioners failed to submit information requested. Pursuant to said schedules of audit adjustments, petitioners' total New York income for the years 1973, 1974, 1975 and 1976 was determined to be \$99,000.00, \$110,000.00, \$110,400.00 and \$127,320.00 respectively. Accordingly, two notices of deficiency were issued on April 13, 1979. One such notice, which was issued against both petitioners herein, asserted New York State personal income tax of \$41,629.00 for the years 1973, 1974 and 1975, interest of \$13,333.15, and penalties of \$16,123.00, for a total due of \$71,085.15. The other notice was issued solely against petitioner Siegfried Vieluf for the year 1976 and asserted New York State and New York City personal income tax of \$22,269.00, interest of \$3,775.26, and penalty of \$1,114.00, for a total due of \$27,158.26.

3. On October 9, 1981 the Audit Division reduced the tax deficiencies herein to \$1,069.00 for the years 1973, 1974 and 1975 and \$193.00 for 1976. Penalties were asserted for all years pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to file and/or timely file the returns and failure to pay the tax determined to be due respectively. Said revised

deficiencies were based on adjustments made for each year at issue for "Additional Business Income" of \$5,200.00 for each of the years 1973, 1974 and 1975, and \$2,600.00 for 1976. Said adjustments resulted from a cost of living analysis computed as follows:

	1973, 1974 & 1975	1976
	<u>WEEKLY AMOUNTS</u>	<u>WEEKLY AMOUNTS</u>
Food	\$ 100.00	\$ 110.00
Clothing & Upkeep	25.00	28.00
Personal Care	8.00	9.00
Utilities	5.00	6.00
Household Supplies	4.00	4.50
Reading Material, Education, etc.	25.00	25.00
Contributions	8.00	8.00
Transportation	12.00	12.00
Telephone	3.00	3.00
Interest Expense	20.00	20.00
Car Expenses	19.00	19.00
Weekly Cash Living Expenses	<u>\$ 229.00</u>	<u>\$ 244.50</u>
Annual Cash Living Expenses	\$11,908.00	\$12,714.00
Plus Annual Rent Expense	2,520.00 (\$210X12)	2,772.00 (\$231X12)
Total Cash Living Expenses	<u>\$14,428.00</u>	<u>\$15,486.00</u>

The amounts assigned for the various cash living expenses were estimated based on family size.

4. Cash available for each of the years 1973, 1974 and 1975 was \$9,235.00 derived solely from wages. Cash available for 1976 was \$12,876.00 derived from wages and rental property. Additional cash needed for living, which was treated as "Additional Business Income", was computed as follows:

	1973, 1974, 1975	1976
Cash Living Expenses	\$14,428.00	\$15,486.00
Less Cash Available	9,235.00	12,876.00
Additional Cash Needed For Living	<u>\$ 5,193.00</u>	<u>\$ 2,610.00</u>

5. Petitioners had no personal savings or checking accounts during the years at issue and no additional sources of income were disclosed during the audit.

6. During the years at issue petitioners owned and operated Cima Meat Products, Inc., a sausage producing business located at 2063 Amsterdam Avenue, New York City.

7. Petitioner Siegfried Vieluf submitted an affidavit wherein he stated in pertinent part that:

- (a) They did not make charitable contributions of \$8.00 per week.
- (b) They did not own a car or house during the years at issue and accordingly, they did not incur any related interest expenses.
- (c) They paid rent of less than \$100.00 per month through late 1975 when they moved and started paying rent of \$105.00 per month.
- (d) A rent check of \$210.00, which was used on audit to compute their rental expenses, represented a two month security deposit.
- (e) They spent less than \$6.00 per week for transportation expenses.

8. Many of petitioner's claims in said affidavit are contradicted by documentary evidence as follows:

- (a) Petitioners' 1975 Federal and New York State returns show a deduction claimed for cash contributions of \$622.00.
- (b) Petitioners' Federal Schedule E for 1976 shows they paid \$1,720.92 in mortgage interest on rental property purchased in 1974.
- (c) Petitioners' Federal Schedule E for 1976 shows a deduction for automobile expenses of \$540.00.

9. Petitioners submitted a statement from the superintendent of one of the buildings where they lived wherein it was stated that "rent was \$105.00 a month in the years 1975 to 1978." However, this statement was not notarized and made no specific reference to petitioners.

10. Petitioners had four children which they claimed resided in the Dominican Republic until mid 1973. A "green card" was submitted evidencing that one son, Heinz Siegfried Vieluf, was admitted to the United States on July 20, 1973.

No substantial evidence was submitted indicating that petitioners' other children entered the United States simultaneously.

11. Petitioners submitted documentation evidencing that Mrs. Vieluf received a gift of \$6,500.00 from her father on March 3, 1975.

12. Petitioners submitted documentation evidencing that Mrs. Vieluf inherited \$15,000.00 from her father's estate on July 28, 1976.

13. Petitioner Siegfried Vieluf had New York State income tax of \$63.00 withheld from his wages during 1973. Credit for this withholding tax was not given in the computation resulting in the revised deficiency.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law is, by its own terms, tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to corresponding sections of Article 30.

B. That based on the additional sources of income established for the years 1975 (\$6,500.00) and 1976 (\$15,000.00) the adjustments made for "Additional Business Income" for said years of \$5,200.00 and \$2,600.00 respectively are hereby cancelled.

C. That petitioners have failed to sustain their burden of proof required pursuant to section 689(e) of the Tax Law to show that their cash living expenses were less than the amounts used in computing the cost of living analysis or that they had additional uncredited sources of income for 1973 and 1974. Accordingly, the adjustments for "Additional Business Income" of \$5,200.00 for each of the years 1973 and 1974 are hereby sustained.

D. That petitioner Siegfried Vieluf is to be given credit for New York State personal income tax withheld of \$63.00 for the year 1973.

E. That the petition of Siegfried Vieluf and Ligia Vieluf is granted to the extent provided in Conclusions of Law "B" and "D" supra, and accept as so granted said petition is, in all other respects, denied.

F. That the Notice of Deficiency issued April 13, 1979 with respect to the years 1973, 1974 and 1975 is to be adjusted to conform to the decision rendered herein.

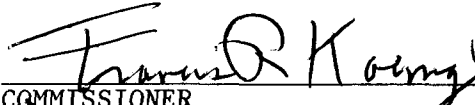
G. That the Notice of Deficiency issued April 13, 1979 with respect to the year 1976 is hereby cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

SEP 16 1983


PRESIDENT


COMMISSIONER


COMMISSIONER