

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Peter J. Grazzini :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
& Unincorporated Business Tax under Articles 22 & :
23 of the Tax Law for the Years 1975 & 1976. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 5th day of October, 1984, he served the within notice of Decision by certified mail upon Frances E. Woodworth, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frances E. Woodworth
5132 Sheridan Dr.
Williamsville, NY 14221

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
5th day of October, 1984.

David Parchuck

William R. H. H. H.
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 5, 1984

Peter J. Grazzini
29 Westchester Dr.
Kissimmee, FL 32741

Dear Mr. Grazzini:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Frances E. Woodworth
5132 Sheridan Dr.
Williamsville, NY 14221
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER J. GRAZZINI	:	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.	:	

Petitioner, Peter J. Grazzini, 29 Westchester Drive, Kissimmee, Florida 32741, 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. 30874).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Park VI, Buffalo, New York, on March 21, 1984 at 2:45 P.M., with all briefs to be submitted by May 21, 1984. Petitioner, Peter J. Grazzini, appeared by Frances E. Woodworth, P.A. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether source and application of funds analyses used by the Audit Division to reconstruct petitioner's income properly determined that petitioner understated business income by \$10,263.73 for 1975 and by \$12,788.91 for 1976.

FINDINGS OF FACT

1. Petitioner herein, Peter J. Grazzini, timely filed New York State income tax resident returns for the years 1975 and 1976 whereon he reported, inter alia, the business income derived from his Pepsi Cola distributorship of

\$12,723.00 and \$16,091.00, respectively. In conjunction therewith, petitioner filed unincorporated business tax returns for 1975 and 1976 whereon he reported the income and deductions attributable to said business. The income derived from petitioner's Pepsi Cola distributorship represents his primary and almost exclusive source of reported income.

2. On December 16, 1978, petitioner executed Form IT-75, Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes, extending the period for assessment for the year 1975 to any time on or before April 15, 1980.

3. The Audit Division, on April 4, 1980, issued a Notice of Deficiency to petitioner for 1975 and 1976, asserting that additional personal income and unincorporated business taxes were due in the sum of \$3,867.51, together with interest of \$1,121.41, for a total allegedly due of \$4,988.92.

4. The aforementioned Notice of Deficiency was based on the results of a field audit of petitioner's personal and business books and records. Using the source and application of funds method to reconstruct income, the Audit Division determined that petitioner understated business income by \$10,263.73 for 1975 and by \$12,788.91 for 1976. Other adjustments were proposed by the Audit Division which petitioner does not contest or which are statutory adjustments based solely on increases to adjusted gross income and, therefore, said other adjustments will not be addressed hereinafter.

5. Petitioner argued that the source and application of funds analyses prepared by the Audit Division did not take into consideration, as nontaxable sources of funds, three personal loans he received during the years in question. Petitioner maintains that during the year 1975 he received a personal loan on or about August 19, 1975 from Ottavio Viola in the amount of \$2,076.54 and a

second loan on or about August 23, 1975 from Beverly Docteur in the sum of \$6,000.00. The alleged third loan was received sometime in 1976, also from Ottavio Viola, in the sum of \$10,000.00.

6. Petitioner, Peter J. Grazzini, did not appear at the hearing held herein to offer his testimony, nor did Ottavio Viola or Beverly Docteur appear to testify on petitioner's behalf.

7. To substantiate the existence and receipt of the alleged \$2,076.00 loan from Ottavio Viola, petitioner submitted the following documentary evidence:

(a) a notarized statement from Ottavio Viola dated November 27, 1979 indicating that he "...let Peter Grazzini borrow my share (\$2,076.54) of our mortgage receipts from Canada in 1975."

(b) a photocopy of an installment note in the amount of \$2,076.00, executed in Niagara Falls sometime during 1975, which was unsigned and only partially completed.

(c) a second installment note¹ in the amount of \$2,076.00, executed in Niagara Falls on August 19, 1975, which was signed by Peter Grazzini and fully completed. This note indicated that the \$2,076.00 was repaid in 1976 in cash.

8. To substantiate the existence and receipt of the alleged \$6,000.00 loan from Beverly Docteur, petitioner submitted the following documentary evidence:

(a) a statement from Beverly Docteur dated March 14, 1984 stating that "...I have received the following payments on a six thousand dollar loan made to Peter Grazzini in 1975...".

¹ The second installment note was submitted after the close of the hearing held on March 21, 1984 but within the 30 day period allowed for the submission of additional documentary evidence and/or the filing of a brief.

(b) an undated notarized statement from Beverly Docteur stating that "This letter is to verify that I lent \$6,000.00 to Peter Grazzini in 1975 for business purposes".

(c) a promissory note in the sum of \$6,000.00 dated August 23, 1975 signed by Peter Grazzini and made payable to the order of Beverly Docteur.

9. To substantiate the existence and receipt of the alleged \$10,000.00 loan from Ottavio Viola, petitioner submitted the following documentary evidence:

(a) a notarized statement from Ottavio Viola dated November 27, 1979 indicating that he "...let Peter Grazzini borrow my share (\$10,000.00) from our \$20,000.00 Check (sic) from Canada in 1976."

(b) a photocopy of an installment note in the amount of \$10,000.00, executed in Niagara Falls sometime in 1976, which was unsigned and only partially completed.

(c) a second installment note² in the amount of \$10,000.00, executed in Niagara Falls on February 8, 1976³, which was signed by Peter Grazzini and fully completed.

10. Petitioner and Ottavio Viola were the owners of a joint account at Canada Trust, Welland, Ontario, Canada. On June 21, 1976, the balance in the account of \$21,660.96 was dispersed equally and the account closed. Petitioner, on June 21, 1976, deposited his share of the proceeds from said account into his checking account.

² The second installment note was submitted after the close of the hearing held on March 21, 1984 but within the 30 day period allowed for the submission of additional documentary evidence and/or the filing of a brief.

³ The second installment note contains an obvious erasure as to the year 1976. It appears that a year sometime during the 1980's was initially entered on the document, subsequently erased and the year 1976 entered in its place.

11. The three loans alleged to have been received by petitioner during the years in question were not deposited into any of petitioner's known bank accounts. The record is devoid of any credible evidence as to the manner in which petitioner utilized the funds allegedly received through said loans.

CONCLUSIONS OF LAW

A. That sections 722 and 689(e) of the Tax Law place the burden of proof on petitioner except in three specifically enumerated instances, none of which is at issue herein. Petitioner has failed to sustain the burden of proof to show that he was the recipient of three personal loans totalling \$18,076.00 during the years in question.

In reaching this conclusion, it is initially noted that petitioner did not appear at the hearing to offer his testimony, nor did Ottavio Viola or Beverly Docteur appear to testify in his behalf. The funds allegedly received from the three loans in question were not deposited into any of petitioner's known bank accounts and there is nothing of substance in the record to show what petitioner did with said alleged funds. Furthermore, the two installment notes concerning the alleged loans from Ottavio Viola which were submitted into evidence at the hearing held on March 21, 1984 were incomplete and unsigned. While petitioner's representative subsequently submitted installment notes which were complete and signed, these documents were apparently drawn up well after the fact (see footnote 3, supra) and, therefore, are accorded little or no weight. Additionally, it is noted that the second installment note submitted with regard to the alleged \$10,000.00 loan from Ottavio Viola is dated "Niagara Falls N.Y. February 8, 1976", some four and one-half months prior to the date the funds were withdrawn from the joint Canadian bank account (see Finding of Fact "10", supra). Assuming, arguendo, that the \$2,076.00 loan was made and

that said loan was repaid in cash in 1976 as alleged by petitioner, the practical effect of said finding would be to reduce the 1975 understatement by \$2,076.00, but to increase the 1976 understatement by this same amount since the \$2,076.00 cash payment made by petitioner was not considered an application of funds in the Audit Division's 1976 source and application of funds analysis.

B. That the petition of Peter J. Grazzini is denied and the Notice of Deficiency dated April 4, 1980 is sustained, together with such additional interest as may be lawfully due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 05 1984


PRESIDENT


COMMISSIONER


COMMISSIONER