

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Vernon P. & Margaret Kania :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of NYS Income and  
Unincorporated Business Tax under Articles 22 & 23 :  
of the Tax Law for the Years 1978 & 1979. :

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 31st day of July, 1984, he served the within notice of Decision by certified mail upon Vernon P. & Margaret Kania, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Vernon P. & Margaret Kania  
60 Fuller Ave.  
Tonawanda, NY 14150

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
31st day of July, 1984.

David Parchuck

James A. Haggard  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

July 31, 1984

Vernon P. & Margaret Kania  
60 Fuller Ave.  
Tonawanda, NY 14150

Dear Mr. & Mrs. Kania:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
VERNON P. KANIA and MARGARET KANIA	:	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 1978 and 1979.	:	

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Petitioners, Vernon P. Kania and Margaret Kania, 60 Fuller Avenue, Tonawanda, New York 14150, 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 1978 and 1979 (File Nos. 37680 and 38035).

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, Part VI, Buffalo, New York, on March 20, 1984 at 10:45 A.M. Petitioner Vernon P. Kania appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUES

I. Whether additional funds found as the result of a comparison of deposits per bank statements to reported gross receipts constitute additional taxable business income.

II. Whether the Audit Division is barred from assessing interest for the period subsequent to the issuance of the notices of deficiency due to the lapse of almost two and one-half years from the date the notices were issued to the date of the administrative hearing.

FINDINGS OF FACT

1. Petitioners herein, Vernon P. Kania and Margaret Kania<sup>1</sup>, timely filed joint New York State income tax resident returns for the years 1978 and 1979. Petitioner also filed unincorporated business tax returns for each year at issue, reporting thereon the profit generated from his activities as a self-employed heating and air conditioning contractor. Except for a small amount of interest and dividend income, petitioner's sole source of reported income was his heating and air conditioning business.

2. On September 10, 1981, the Audit Division issued two notices of deficiency to petitioner for the years 1978 and 1979. The first Notice asserted that additional personal income tax of \$726.66 was due, together with interest of \$119.90, for a total allegedly due of \$846.56. The second Notice proposed a deficiency in unincorporated business tax of \$328.42, plus interest of \$54.20, for a total allegedly due of \$382.62.

3. The aforementioned notices of deficiency were premised on the results of a field audit of petitioner's personal and business books and records. Said field audit resulted in the assertion by the Audit Division that petitioner had additional business income of \$3,385.77 for 1978 and \$3,612.47 for 1979. Other adjustments were also proposed which petitioner does not contest or which were statutory adjustments based solely on the proposed changes to adjusted gross income. Accordingly, said other adjustments will not be addressed hereinafter.

4. The Audit Division's assertion that petitioner had additional business income for each of the years at issue is based upon the results of a comparison

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<sup>1</sup> Margaret Kania is involved in this proceeding due solely to the fact that she filed joint tax returns with Vernon P. Kania. Accordingly, the term "petitioner" shall hereafter refer solely to Vernon P. Kania.

of total deposits made to petitioner's checking account to reported gross receipts. The following chart represents a synopsis of said comparison:

	1978	1979
Total deposits to checking account	\$69,043.54	\$72,365.05
Less: checks from mother	1,631.77	1,320.91
checks from L.J. Kirk	4,100.00	350.00
receipts from 1977 deposited in 1978	7,459.00	--
transfer from savings account	--	1,897.67
items purchased for friends	1,446.00	1,480.00
receipts from Kirk estate	--	5,545.00
Net business receipts	\$54,406.77	\$61,771.47
Business receipts reported	51,021.00	58,159.00
Net adjustment	<u>\$ 3,385.77</u>	<u>\$ 3,612.47</u>

5. Petitioner's books and records for the years at issue were admittedly poor. Mr. Kania described his bookkeeping as "deplorable". For 1978 and 1979 petitioner maintained one checking account where personal and business funds were regularly commingled. No accurate records were kept by petitioner segregating personal funds from business funds.

6. Petitioner maintains that the additional business income as determined from the Audit Division's comparison of deposits to reported gross receipts is inaccurate. Mr. Kania asserts that insufficient credit was given for items purchased for friends and that no credit was given for amounts he received from his daughter in repayment of a \$3,000.00 loan. No documentary or other credible evidence was adduced at the hearing held herein to support petitioner's arguments. Furthermore, petitioner's testimony was vague and unpersuasive.

#### 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 are at issue herein. That petitioner has failed to sustain his burden of proof to show that the additional business income, as determined by the Audit Division, originated from non-taxable sources.

B. That there is no provision in Article 22 or 23 of the Tax Law which would permit interest to be waived. Petitioner at all times had the option of paying the proposed deficiencies so as to stop the accrual of additional interest charges.

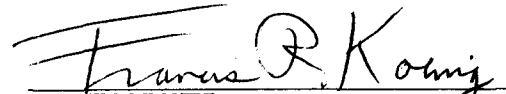
C. That the petition of Vernon P. Kania and Margaret Kania is denied and that both notices of deficiency dated September 10, 1981 are sustained, together with such additional interest as required by sections 722 and 684 of the Tax Law.

DATED: Albany, New York

JUL 31 1984

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER