

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Salvatore & Nancy Locicero : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income Tax :  
under Article 22 of the Tax Law and Chapter 46, :  
Title U of the Administrative Code of the City of :  
New York for the Year 1977. :

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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 9th day of August, 1984, he served the within notice of Decision by certified mail upon Salvatore & Nancy Locicero, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Salvatore & Nancy Locicero  
3821 Boston Rd.  
Bronx, NY 10469

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  
9th day of August, 1984.

David Parchuck

James G. Heyland  
Authorized to administer oaths  
pursuant to Tax Law section 174

## STATE TAX COMMISSION

of

# AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law and Chapter 46:  
Title U of the Administrative Code of the City of :  
New York for the Year 1977. :

SS. :

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 9th day of August, 1984, he served the within notice of Decision by certified mail upon Frank P. Marino, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank P. Marino  
Marino, Chambers & Lou  
175 Main St.  
White Plains, NY 10601

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  
9th day of August, 1984.

Daniel Paruchuk

*James D. Hansen*  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

August 9, 1984

Salvatore & Nancy Locicero  
3821 Boston Rd.  
Bronx, NY 10469

Dear Mr. & Mrs. Locicero:

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, 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  
Frank P. Marino  
Marino, Chambers & Lou  
175 Main St.  
White Plains, NY 10601  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
SALVATORE AND NANCY LOCICERO	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title U of the	:	
Administrative Code of the City of New York for	:	
the Year 1977.	:	

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Petitioners, Salvatore and Nancy LoCicero, 3821 Boston Road, Bronx, New York 10469, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and Chapter 46, Title U of the Administrative Code of the City of New York for the year 1977 (File No. 31222).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 23, 1984 at 2:45 P.M., with additional information to be submitted by March 23, 1984. Petitioners appeared by Frank P. Marino, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irving Atkins, Esq., of counsel).

#### ISSUE

Whether the Audit Division properly adjusted petitioners' personal income tax by increasing receipts and decreasing expenses of Romo Furniture Manufacturing Corp. for the year 1977.

#### FINDINGS OF FACT

1. On July 22, 1980, as the result of a field audit, the Audit Division issued a Notice of Deficiency pursuant to Article 22 of the Tax Law against

petitioners, Salvatore and Nancy LoCicero, in the amount of \$5,173.90 plus penalty and interest of \$1,247.34 for a total due of \$6,421.24 for the year 1977.<sup>1</sup>

2. The Audit Division had conducted a multiple tax audit of petitioners and Romo involving sales and use taxes, corporation franchise tax and personal income tax. Following prehearing conferences, adjustments to the deficiencies were agreed upon leaving in issue \$3,925.12 in income tax. Said amount arose from a cash availability analysis showing additional income from the Subchapter S Corporation, Romo Furniture Manufacturing Corp., of \$32,552.00 as determined by the auditor.

3. On audit, the auditor found that Mr. and Mrs. LoCicero had purchased a home in 1977 and he asked the LoCiceros for documentation showing where the funds for the purchase had been obtained. Mr. LoCicero explained that the majority of the funds were received in the form of loans from Mrs. LoCicero's aunt and Mr. LoCicero's sister. The auditor would not accept this explanation and computed a \$32,552.00 cash availability shortage including \$29,375.00 in unreported funds used to purchase the house.

4. Petitioners purchased a home with a closing date of July 7, 1977. The purchase price was \$63,750.00 including the assumption of a first mortgage amounting to \$34,444.70. The remainder was to be paid in cash. In May petitioners made a downpayment of \$6,375.00 upon signing the purchase contract.

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<sup>1</sup> In conjunction with the same field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Romo Furniture Manufacturing Corp. ("Romo"), petitioner's business. That assessment has been resolved and paid and is not in issue. The Audit Division also issued a Notice of Deficiency pursuant to Article 9-A of the Tax Law against Romo. A hearing on said deficiency was held in conjunction with the instant matter and a separate decision issued herewith.

Mrs. LoCicero's aunt, Mrs. Cregan, gave petitioners the \$6,375.00 for the downpayment. In July, Mrs. Cregan gave Mrs. LoCicero another \$7,000.00 toward payment due upon closing. Mrs. LoCicero combined the \$7,000.00 with a \$9,948.61 withdrawal from her own savings account to obtain a bank check for \$17,000.00 which was due at closing. Additionally, Mr. LoCicero's sister, Anna LoCicero, loaned petitioners \$6,000.00 which she delivered in the form of a check from her savings bank. The loans from Mrs. Cregan, therefore, totalled \$13,375.00 for the purchase not \$23,000.00 as originally determined by the Audit Division. The remaining amounts came from petitioners' savings account and a loan from Anna LoCicero.

5. The loans from Mrs. Cregan were very informal in nature. She had been assisting petitioners and their children with loans and gifts for a number of years. It is apparent that Mrs. Cregan did not expect petitioners to repay the loans until they were in better financial condition. Mrs. Cregan stated that, "They are like my son and daughter . . . I am always helping them all the time . . . What am I going to do with it? I might as well do some good with it." In fact, subsequent to the period in issue, Mrs. Cregan, sold her own house and gave petitioners \$32,000.00 from the proceeds as a gift for which she filed a Federal gift tax return.

6. The Audit Division questioned the source of the loans and gifts made by Mrs. Cregan since withdrawals from her savings accounts did not amount to the total of gifts and loans received by petitioners. In her testimony, Mrs. Cregan explained that when she was a child, her father had lost all his money in the bank during the Great Depression. She, therefore, had a fear of banks for many years and, as a result, kept large amounts of money in a safe deposit box. It was only recently that Mrs. Cregan's accountant was able to

convince her to put some of her money into interest-bearing accounts and certificates of deposit. Therefore, most of the money Mrs. Cregan gave to petitioners came from her safe deposit box and would not have been recorded as a bank transaction.

7. In addition to the \$29,375.00 from various sources used to purchase the house, petitioners also had rental income of \$1,050.00 and \$2,100.00 from their furniture business which was not taken into account by the Audit Division. The total of all these amounts is \$32,525.00 which approximates the \$32,552.00 in audit adjustments for income tax purposes.

#### CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law provides that "[i]n any case before the tax commission under this article, the burden of proof shall be upon the petitioner" with exceptions not relevant herein. Section T46-189.0(e) of Chapter 46, Title T of the Administrative Code of the City of New York contains a similar provision.


B. That petitioners have met their burden of proving the availability of the funds used to purchase their house. Petitioners showed that, of the approximately \$29,000.00 in cash needed to purchase their home, \$9,948.61 came from their own savings, \$13,375.00 came from loans from Mrs. Cregan and \$6,000.00 came from a loan from Anna LoCicero. Moreover, petitioners showed that an additional \$2,100.00 came from their business and \$1,050.00 came from rental income. These amounts satisfactorily explain the cash availability shortage which was the only amount remaining in issue inasmuch as all other amounts have either been paid or resolved.


C. That the petition of Salvatore and Nancy LoCicero is granted and the Notice of Deficiency issued July 22, 1980 is cancelled.

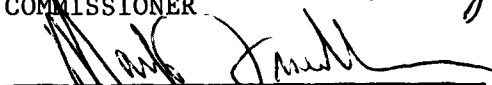
DATED: ALBANY, NEW YORK

AUG 09 1984

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER