

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
George & Elaine Mazur :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Years :  
1971 & 1972. :  
\_\_\_\_\_ :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

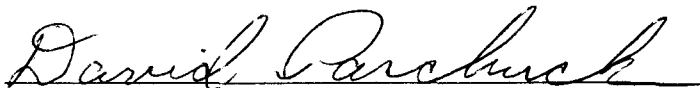
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of April, 1984, he served the within notice of Decision by certified mail upon George & Elaine Mazur, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

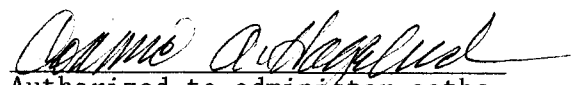
George & Elaine Mazur  
3136 Lydia Lane  
Bellmore, NY 11710

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  
6th day of April, 1984.



  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

April 6, 1984

George & Elaine Mazur  
3136 Lydia Lane  
Bellmore, NY 11710

Dear Mr. & Mrs. Mazur:

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 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  
Herbert P. Sydney  
Sydney & Seif  
122 E. 42nd St.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE and ELAINE MAZUR	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1971 and 1972.	:	

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Petitioners, George and Elaine Mazur, 3136 Lydia Lane, Bellmore, New York 11710, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 21146).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 24, 1979 at 2:45 P.M. Petitioners appeared by Sydney & Seif, Esqs., (Allan N. Seif, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner George Mazur was a partner in the New York limited partnership of A. C. Kluger & Co. during the tax year 1971.

II. Whether petitioner George Mazur received the sum of \$69,990.81 as his distributive share of the income of said partnership for 1971 or the sum of \$45,000.00 for his services as an employee of said partnership during 1971.

FINDINGS OF FACT

1. Petitioners, George and Elaine Mazur, filed New York State income tax resident returns for 1971 and 1972 on May 22, 1973 and June 29, 1973.

respectively. Petitioners reported in their return for 1971 the sum of \$20,575.09 as "Total Income" and the sum of \$9,802.33 as "New York taxable income".

2. Petitioners, George and Elaine Mazur, reported in Schedule A of their New York State Income Tax Resident Return for 1972 "Wages, salaries, tips, etc." in the sum of \$49,067.13. Said petitioners further reported in said return the sum of \$43,780.02 as "Total Income" and New York taxable income in the sum of \$27,006.61.

3. (a) Petitioners and the New York State Tax Commission executed a "Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes" on April 29, 1976, providing, in part, that the amount of any personal income taxes due for the taxable year ended December 31, 1971 under the Tax Law could be assessed at any time on or before April 15, 1977.

(b) On April 6, 1976, petitioners and the New York State Tax Commission executed a "Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes". Said consent provided, in part, that any personal income taxes due for the taxable year ended December 31, 1972 could be assessed at any time on or before April 15, 1977.

4. On October 31, 1977, the Audit Division issued a Statement of Audit Changes against the said petitioners recomputing their tax liability for the years 1971 and 1972, as hereafter set forth:

"...to conform with the adjustments made by the Internal Revenue Service on your Federal income tax returns for the years 1971 and 1972. Your distributable share of the partnership income reported by the partnership A. C. Kluger and Company for the year 1971 is deemed to be taxable to the extent reported on the partnership tax return (\$69,990.81)."

5. (a) For the year 1971, the said Statement of Audit Changes recomputed "Adjusted New York Income" to be the sum of \$67,808.88 and "Corrected New York Taxable Income" to be the sum of \$58,078.14.

Accordingly, a Notice of Deficiency was issued against the petitioners on October 31, 1977 imposing additional personal income tax for the year 1971 in the sum of \$5,908.92, penalty under section 685(a)(1) and (a)(2) of \$2,806.73 and interest of \$1,965.48, for a total deficiency of \$10,681.13.

(b) For the year 1972, the aforesaid Statement of Audit Changes recomputed "Adjusted New York Income" to be the sum of \$45,214.46 and "Corrected New York Taxable Income" to be the sum of \$30,618.54. The adjustments to income for 1972 were attributable to changes made to petitioners' federal taxable income by the Internal Revenue Service. Said adjustments were conceded to and are not at issue.

Accordingly, the aforesaid Notice of Deficiency issued against the petitioners as aforesaid on October 31, 1977 imposed additional personal income tax for the year 1972 in the sum of \$1,371.90, penalty under section 685(a)(1) and (a)(2) of \$527.97 and interest of \$467.67, for a total deficiency of \$2,367.54.

6. On or about July 8, 1970, petitioner George Mazur entered into an agreement with Kluger & Ellis (the predecessor partnership of A. C. Kluger & Co.), a New York limited partnership engaged in the business of stockbrokerage, pursuant to which it was agreed, in part, as follows:

"Whereas it is the intention of this partnership to admit George Mazur as a General Partner, below are set forth the following conditions and mutual covenants for such admission  
1) George Mazur shall satisfy all the requirements of the Rules and Regulations of the New York Stock Exchange incidental to Allied Membership of said Exchange."

7. Thereafter by letter dated October 6, 1970, the said partnership of Kluger & Ellis addressed a letter to Mr. George Lutes, Office of the Secretary, New York Stock Exchange, enclosing an "Application Form for prospective new General Partner and Allied Member of our firm, George Mazur" and requesting "posting and approval as soon as possible".

8. Subsequently, by letter dated October 27, 1970, the said partnership of Kluger & Ellis addressed a letter to Mr. James Baker, Secretary's Office, New York Stock Exchange, stating in part "As per telephone conversation of October 27, 1970, please use this letter as your authority to withdraw form AD-2 for the above named individual;" referring to the petitioner George Mazur.

Said letter thereby withdrew the application of the said partnership for the approval by the New York Stock Exchange of the petitioner George Mazur as a partner of said partnership.

9. By letter dated November 12, 1970 addressed by the said partnership of Kluger & Ellis to Mr. James R. Davis, Assistant Manager, New York Stock Exchange, it was stated in part as follows:

"Per our telephone conversation of last week, please be advised that it would be greatly appreciated if the Exchange would approve the nomination of our prospective partner, George Mazur, as sales manager during this interim period; said designation to also carry with it the supervisory power and responsibility.

In addition, I should like to also nominate Mr. Mazur as our director of acquisitions."

10. By letter dated November 18, 1970, the said partnership of Kluger & Ellis was advised in reply to its aforesaid letter dated November 12, 1970, that "the Exchange will conditionally approve Mr. George Mazur as Sales Manager and Director of Acquisitions for your firm effective November 18, 1970."

11. On September 10, 1970, the said partnership Kluger & Ellis filed a "Certificate of Limited Partnership", dated September 8, 1970, pursuant to

which, among other things, it stated that it was engaged in the business of "broker-dealer in securities" and listed the names and addresses of its General Partners and Limited Partners. Said list of the names and addresses of General and Limited Partners did not include the name or address of the petitioner George Mazur.

12. On January 14, 1971, the said partnership of Kluger & Ellis filed an "Amendment to Certificate of Limited Partnership of Kluger & Ellis", dated December 31, 1970, pursuant to which it changed its name to A. C. Kluger & Co. and listed the names and addresses of its General Partners and Limited Partners. Said list of the names and addresses of General and Limited Partners did not include the name or address of the petitioner George Mazur.

13. On December 10, 1971, the petitioner George Mazur suffered a heart attack and was hospitalized for 21 days, returning to work at the said partnership of A. C. Kluger & Co. in or about March, 1972.

14. The said partnership of A. C. Kluger & Co. terminated its relationship with petitioner George Mazur by letter dated April 1, 1972, effective March 31, 1972.

15. Petitioners reported as "Miscellaneous Income", in Schedule A of their 1971 return, the sum of \$22,000.00 which was described as "Fee as Director of Sales". Petitioner George Mazur testified at the hearing that he received a total of \$45,000.00 from the partnership A.C. Kluger & Co. as compensation for his services as its Director of Sales. In its New York State Partnership Return for 1971, the said partnership of A.C. Kluger & Co. reported that petitioner George Mazur was a partner and that he had received from the said partnership during 1971 the sum of \$69,990.81 as "Ordinary Income" in his capacity as a partner thereof.



16. Petitioners claim that petitioner George Mazur was not a partner of A. C. Kluger & Co. and that he did not receive a distributive share of its income as a partner thereof during 1971. They further claimed that during 1971 petitioner George Mazur rendered services as an employee of the said partnership in the capacity of its Director of Sales and that he received income from fees as such.

CONCLUSIONS OF LAW

A. That there was no agreement, express or implied, between A.C. Kluger & Co., a New York limited partnership, and the petitioner George Mazur pursuant to which the said petitioner was either a general or limited partner thereof during the year 1971.

B. That during the year 1971 the petitioner George Mazur received a total of \$45,000.00 from the partnership of A.C. Kluger & Co., which sum was paid to him by the partnership as compensation for services rendered as an employee thereof in the capacity of its Director of Sales.

C. That petitioners George Mazur and Elaine Mazur have not shown that their failure to file New York State income tax returns on time was due to reasonable cause; therefore, the penalties asserted against them, for 1971 and 1972, pursuant to sections 685(a)(1) and (a)(2) of the Tax Law, are sustained.


D. That the petition of George and Elaine Mazur is granted to the extent indicated in Conclusions of Law "A" and "B". The Audit Division is hereby directed to accordingly modify the Notice of Deficiency issued October 31,

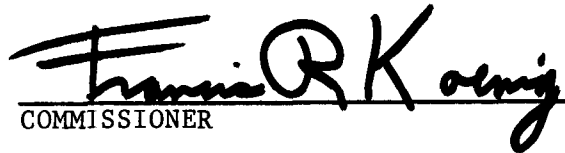
1977; and that except as so granted, the said notice is in all other respects sustained.

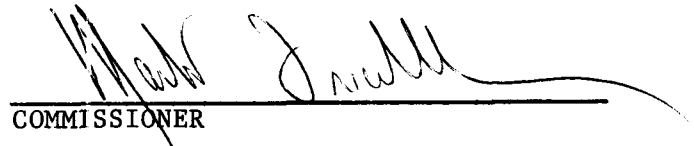
DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER