

STATE TAX COMMISSION

AFFIDAVIT OF MAILING

SS. :

Barbara Anderson
Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

AFFIDAVIT OF MAILING

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

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

February 29, 1984

Samuel Shauer
1105 Deer Park Ave.
N. Babylon, NY 11703

Dear Mr. Shauer:

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
John W. Speller
Hyams, Speller & Haselkorn
100 Jericho Quadrangle, Suite 335
Jericho, NY 11753
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SAMUEL SHAUER	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1976 and 1977.	:	

Petitioner, Samuel Shauer, 1105 Deer Park Avenue, North Babylon, New York 11703, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1976 and 1977 (File No. 32998).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 23, 1983 at 2:45 P.M., with additional evidence to be filed by August 31, 1983. Petitioner appeared by Hyams, Speller & Haselkorn, C.P.A.'s (John W. Speller, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the income reconstruction audit properly reflected petitioner's income.

FINDINGS OF FACT

1. On September 23, 1980, the Audit Division issued a Statement of Personal Income Tax Audit Changes against petitioner, Samuel Shauer, alleging additional personal income taxes due of \$3,617.65 plus interest and \$4,660.12 plus interest for the 1976 and 1977 tax years, respectively. Negligence

penalites under Tax Law §685(b) were also imposed. The Audit Division computed such deficiencies as follows:

	<u>1976</u>	<u>1977</u>
Taxable Income Reported by Petitioner	\$16,996.13	\$14,315.60
<u>Adjustments:</u>		
1. Business expenses paid by cash ¹	1,051.00	2,187.00
2. Unexplained deposits	18,963.00	25,215.00 ²
3. Cash living expenses	4,850.00	5,000.00
4. Medical expense adjusted due to increase in adjusted gross income	--	939.22
Total	<u>\$41,860.13</u>	<u>\$47,656.82</u>
Tax on Corrected Taxable Income	\$ 4,589.02	\$ 5,458.52
Tax Surcharge	114.73	
Corrected Tax Due	4,703.75	5,458.52
Tax Computed by Petitioner	1,086.10	798.40
Additional Tax Due	<u>\$ 3,617.65</u>	<u>\$ 4,660.12</u>

2. On March 20, 1981, the Audit Division issued a Notice of Deficiency against petitioner, Samuel Shauer, alleging additional personal income tax due of \$8,277.77. In order to stop the running of interest, at the hearing herein petitioner submitted a check in the amount of \$4,000.00 which was his estimate of what he would finally owe.

3. The Audit Division reconstructed petitioner's income by a cash availability audit using, in part, a source and application of funds analysis which found the following:

<u>SOURCES</u>	<u>1976</u>	<u>1977</u>
Schedule "C" Gross Receipts	\$24,976	\$24,366
Schedule "E" Rent Receipts	3,446	4,749
Checks to Cash - Acc't. #1	6,124	5,915
#2	500	--
Mortgage Payments Received	3,663	3,663
Dividend Income	333	350
Sale of Cadillac	1,200	--
Refund of Sewerage Payment	1,850	--

¹ It is unclear why the Audit Division referred to these amounts as representing "sales difference".

² This amount, as noted in Finding of Fact "3", infra, should be \$24,315.00.

Savings Withdrawals - Acc't. #16	20,000	10,000
#25	385	384
#26	385	384
#18	--	10,000
#21	--	4,000
Passbook Loan	7,500	
Total Sources	<u>\$70,362</u>	<u>\$63,811</u>

<u>APPLICATIONS</u>	<u>1976</u>	<u>1977</u>
Passbook Loan Repayment	\$ 6,650	--
Purchase of Auto	7,700	--
Deposits - Acc't. #1	27,001	--
#2	3,446	--
Deposits to Rental	--	\$ 4,749
Business	--	40,416
Deposits - Savings Acc't. # 1	250	--
#16	12,776	13,503
#17	2,771	2,832
#18	4,678	12,763
#21	3,053	3,663
#24	1,000	--
#27 & 28	10,000	--
#30 & 31	10,000	--
#32	--	5,000
#33	--	5,000
Loan Repayment	--	200
Total Application	<u>\$89,325</u>	<u>\$88,126</u>
Overapplication of Funds	\$18,963	\$24,315 ³

4. Petitioner and his wife, Ruth Shauer, filed New York State combined personal income tax resident returns for each of the years at issue. They filed separately on the same tax return and reported for 1976 total income of \$36,326.71, of which \$26,795.23 was allocated to petitioner and the remainder to his wife, and for 1977, total income of \$36,066.26, of which \$25,335.95 was allocated to petitioner and the remainder to his wife. For 1976, \$17,125.60 of petitioner's total income of \$26,795.23 represented the profit from his medical

³ The Audit Division incorrectly (by reason of an arithmetical error) determined an overapplication of funds of \$25,215.

practice. For 1977, \$16,428.51 of petitioner's total income of \$25,335.95 represented the profit from his medical practice.

5. The auditor testified that the adjustment for "unexplained deposits" of \$18,963.00 for 1976 as noted in Finding of Fact "1", supra, should be reduced to \$14,758.00 because "I have already agreed with the petitioners that there was \$4,250 that they had just now verified to me that are not sales". The auditor also testified that the total sources of \$63,811.00 for 1977 as noted in Finding of Fact "3", supra, should be increased by \$3,445.00 which represents "additional savings withdrawals which were not originally taken into consideration". Therefore, the unexplained deposits of \$24,315.00 noted in footnote "2" to Finding of Fact "1", supra, should be reduced to \$20,870.00.

6. Although petitioner was given approximately two months from the date of the hearing, until August 31, 1983, to submit (i) substantiation from the Social Security Administration concerning the amount of Social Security benefits that he and/or his wife received during the periods at issue and (ii) evidence concerning two certificates of deposits which he claims was the source of additional funds for 1976, he has failed to submit such substantiation and/or evidence.

CONCLUSIONS OF LAW

A. That pursuant to Tax Law section 689(e), the burden of proof is imposed upon the petitioner to show that the audit method used by the Audit Division in reconstructing his income for 1976 and 1977 was inaccurate and/or incorrect. Matter of Robert Damiecki and Patricia Damiecki, State Tax Commission, September 28, 1983. Although petitioner claims that Social Security benefits and two unspecified certificates of deposit represent additional sources of funds for the periods at issue, he has failed to substantiate such claim. We

note further that he was given a reasonable period of time after the close of the hearing herein to provide such substantiation.

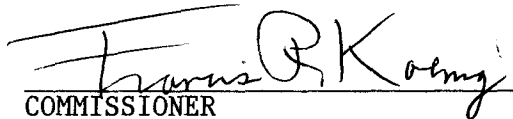
B. That the petition of Samuel Shauer is granted to the extent noted in Finding of Fact "5", supra, and that the Audit Division is directed to recalculate the medical expense adjustment noted in Finding of Fact "1", supra, to so conform. But, in all other respects, the petition is denied.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 29 1984


PRESIDENT


COMMISSIONER


COMMISSIONER