

STATE TAX COMMISSION

AFFIDAVIT OF MAILING

Julie P. Hammond
Authorized to administer oaths
pursuant to Tax Law section 174

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

November 9, 1984

Peter A. & Dolores Spoletti
5 Ridge Rd.
Coram, NY 11727

Dear Mr. & Mrs. Spoletti:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER A. SPOLETI and DOLORES SPOLETI	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

Petitioners, Peter A. Spoleti and Dolores Spoleti, 5 Ridge Road, Coram, New York 11727, 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 1977 (File No. 35372).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 16, 1984 at 9:15 A.M., with all briefs to be submitted by April 30, 1984. Petitioner Peter A. Spoleti appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether a change made by the Internal Revenue Service increasing petitioners' 1977 Federal adjusted gross income, and consequently their total New York income, was subsequently rescinded based on petitioners' filing of an amended Federal return.

FINDINGS OF FACT

1. Petitioners, Peter A. Spoleti and Dolores Spoleti, timely filed a joint New York State Income Tax Resident Return for the year 1977 whereon they claimed a capital loss of \$8,786.00. Said capital loss was also claimed on their 1977 U.S. Individual Income Tax Return.

2. On April 17, 1978, the Internal Revenue Service issued a statement to petitioners advising them that their claimed 1977 Federal refund of \$2,680.00 had been reduced to \$35.28 on the basis that "an error was made in figuring your capital gains and losses on Schedule D." The revised refund was computed based on the disallowance of \$6,786.00, which represented the portion of the capital loss deduction claimed in excess of the maximum capital loss allowable for said year of \$2,000.00.

3. As the result of the aforestated federal change, a Statement of Audit Changes was issued to petitioners on December 16, 1980 wherein their total New York income reported of \$45,382.00 was increased by \$6,786.00 to conform with said federal change. Accordingly, a Notice of Deficiency was issued against petitioners on April 1, 1981 asserting additional personal income tax of \$1,018.00, plus interest of \$254.36, for a total due of \$1,272.36.

4. Petitioners subsequently filed an amended 1977 Federal return whereon they revised the character of said loss from a capital loss to a small business corporation loss. On their amended return said loss was reported on Federal Schedule E. They contended that such loss was erroneously reported on their original return as a capital loss.

5. Petitioner Peter A. Spoletti contended that the Internal Revenue Service accepted their amended return and subsequently refunded the balance of the \$2,680.00 refund claimed on their original return; however, no documentation was submitted to support such contention. Although sufficient time was granted subsequent to the hearing held herein for petitioners to submit a copy of the 1977 federal refund check for the balance of the refund as claimed on their Federal return or a statement from the Internal Revenue Service indicating acceptance of the amended return, they failed to do so.

CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides that:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year..."


B. That petitioners have failed to sustain their burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that the Internal Revenue Service accepted their 1977 amended return characterizing the loss at issue as a small business corporation loss rather than as a capital loss, as reported on their original return.

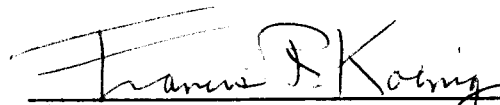
C. That the petition of Peter A. Spoletti and Dolores Spoletti is denied and the Notice of Deficiency dated April 1, 1981 is sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

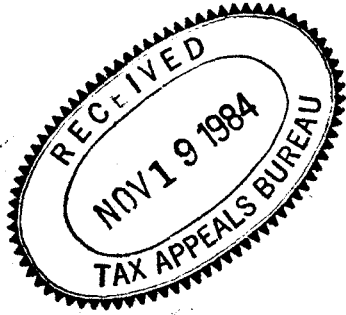
State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Peter A. & Dolores Spoletti
5 Ridge Rd.
Coram, NY 11727



CERTIFIED

P 6 9 3 1 6 8 8 8 8

MAIL

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

November 9, 1984

Peter A. & Dolores Spoletti
5 Ridge Rd.
Coram, NY 11727

Dear Mr. & Mrs. Spoletti:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER A. SPOLETI and DOLORES SPOLETI	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

Petitioners, Peter A. Spoletti and Dolores Spoletti, 5 Ridge Road, Coram, New York 11727, 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 1977 (File No. 35372).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 16, 1984 at 9:15 A.M., with all briefs to be submitted by April 30, 1984. Petitioner Peter A. Spoletti appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether a change made by the Internal Revenue Service increasing petitioners' 1977 Federal adjusted gross income, and consequently their total New York income, was subsequently rescinded based on petitioners' filing of an amended Federal return.

FINDINGS OF FACT

1. Petitioners, Peter A. Spoletti and Dolores Spoletti, timely filed a joint New York State Income Tax Resident Return for the year 1977 whereon they claimed a capital loss of \$8,786.00. Said capital loss was also claimed on their 1977 U.S. Individual Income Tax Return.

2. On April 17, 1978, the Internal Revenue Service issued a statement to petitioners advising them that their claimed 1977 Federal refund of \$2,680.00 had been reduced to \$35.28 on the basis that "an error was made in figuring your capital gains and losses on Schedule D." The revised refund was computed based on the disallowance of \$6,786.00, which represented the portion of the capital loss deduction claimed in excess of the maximum capital loss allowable for said year of \$2,000.00.

3. As the result of the aforestated federal change, a Statement of Audit Changes was issued to petitioners on December 16, 1980 wherein their total New York income reported of \$45,382.00 was increased by \$6,786.00 to conform with said federal change. Accordingly, a Notice of Deficiency was issued against petitioners on April 1, 1981 asserting additional personal income tax of \$1,018.00, plus interest of \$254.36, for a total due of \$1,272.36.

4. Petitioners subsequently filed an amended 1977 Federal return whereon they revised the character of said loss from a capital loss to a small business corporation loss. On their amended return said loss was reported on Federal Schedule E. They contended that such loss was erroneously reported on their original return as a capital loss.

5. Petitioner Peter A. Spoletti contended that the Internal Revenue Service accepted their amended return and subsequently refunded the balance of the \$2,680.00 refund claimed on their original return; however, no documentation was submitted to support such contention. Although sufficient time was granted subsequent to the hearing held herein for petitioners to submit a copy of the 1977 federal refund check for the balance of the refund as claimed on their Federal return or a statement from the Internal Revenue Service indicating acceptance of the amended return, they failed to do so.

CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides that:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year..."

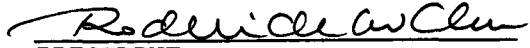
B. That petitioners have failed to sustain their burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that the Internal Revenue Service accepted their 1977 amended return characterizing the loss at issue as a small business corporation loss rather than as a capital loss, as reported on their original return.

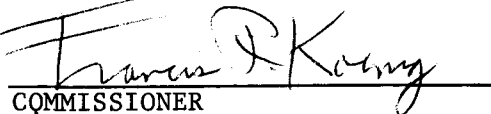
C. That the petition of Peter A. Spoletti and Dolores Spoletti is denied and the Notice of Deficiency dated April 1, 1981 is sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER