

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Francis & Mary Lake : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income &
UBT under Article 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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Francis & Mary Lake, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Francis & Mary Lake
11051 W. Center St. Ext.
Medina, NY 14103

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 February, 1985.

David Parchuck

Samuel D. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Francis & Mary Lake : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income &
UBT under Article 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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Lance J. Mark, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lance J. Mark
Mack, Mark & Associates
S.A. Cook Bldg., Suite 6, 534 Main St., Box 248
Medina, NY 14103

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
6th day of February, 1985.

David Parchuck

Bruno A. Haglund

Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Francis & Mary Lake
11051 W. Center St. Ext.
Medina, NY 14103

Dear Mr. & Mrs. Lake:

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: Petitioner's Representative
Lance J. Mark
Mack, Mark & Associates
S.A. Cook Bldg., Suite 6, 534 Main St., Box 248
Medina, NY 14103
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
FRANCIS LAKE AND MARY LAKE	:	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.	:	

Petitioners, Francis Lake and Mary Lake, 11051 West Center Street Extension, Medina, New York 14103, 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 No. 35786).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Room 1300, Rochester, New York, on April 25, 1984 at 9:15 A.M., with all briefs to be submitted by June 15, 1984. Petitioners appeared by Mack, Mark & Associates (Lance J. Mark, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether the Audit Division's reconstruction of petitioners' income for the years 1978 and 1979, using net worth analyses, properly determined that petitioners had additional unreported business income.

FINDINGS OF FACT

1. Petitioners herein, Francis Lake and Mary Lake,¹ timely filed New York State resident income tax returns for 1978 and 1979. Francis Lake also filed

¹ Mary Lake is involved in this proceeding as the result of filing joint income tax returns with her husband. Accordingly, the term "petitioner" shall hereinafter refer solely to Francis Lake.

unincorporated business tax returns for each of the years at issue, reporting thereon the income generated from his sale of used automobile parts and cars.

2. On September 10, 1981, the Audit Division issued a Notice of Deficiency (hereinafter "Notice") to petitioner for the years 1978 and 1979. Said Notice asserted that additional personal income and unincorporated business taxes of \$5,229.96 were due, together with penalty² of \$378.68 and interest of \$847.65, for a total allegedly due of \$6,456.29.

3. The aforementioned Notice was based on the results of a field audit of petitioner's personal and business books and records. Using net worth analyses to reconstruct income, the Audit Division determined that petitioner had understated business income by \$13,303.00 for 1978 and by \$16,375.00 for 1979. Other adjustments were proposed by the Audit Division which were based solely on the proposed increases to adjusted gross income. Accordingly, said other adjustments will not be addressed hereinafter.

4. At the hearing held herein, the parties stipulated that the proposed understatement of income for 1979 of \$16,375.00 should be reduced by \$900.00 to \$15,475.00. Said reduction was the result of petitioner's receipt of \$900.00 from one Norman Smith in repayment of a personal loan.

5. Petitioner maintains that the net worth analyses prepared by the Audit Division did not take into consideration funds accumulated in prior years which were used during the years under audit. Petitioner also argues that he should be given credit for funds received from certain insurance settlements and for funds received from his nephew in repayment of a personal loan.

² Penalties were asserted pursuant to Tax Law section 685(b) for negligence and Tax Law section 685(c) for underpayment of estimated tax.

6. Due to the death of his daughter in 1977, petitioner received, as her beneficiary, insurance proceeds totalling \$41,067.77. Said total consisted of the following amounts:

- a) \$4,781.85 from Combined Life Insurance Company;
- b) \$20,220.25 from Metropolitan Life Insurance Company;
- c) \$10,029.10 from Prudential Insurance Company;
- d) \$1,000.00 from Prudential Insurance Company; and
- e) \$5,036.57 from Prudential Insurance Company.

7. In the net worth analysis for 1978, the Audit Division allowed petitioner credit for nontaxable insurance proceeds of \$22,220.25. This amount was comprised of the \$20,220.25 check from Metropolitan Life Insurance Company which was deposited by petitioner on January 16, 1978 and a \$2,000.00 deposit made on February 17, 1978 which petitioner's records indicated was from insurance proceeds. No credit was allowed for the balance of the insurance proceeds amounting to \$18,847.52 (\$41,067.77 less \$22,220.25).

8. The check from Combined Life Insurance Company in the amount of \$4,781.85 was dated December 12, 1977 and was deposited by petitioner on December 30, 1977 into a checking account he maintained in the State of Florida. Net increases or decreases to the Florida checking account were not included by the Audit Division in its net worth analyses. However, an unexplained deposit to said checking account in the amount of \$1,000.00 was included by the Audit Division in the net worth analysis for 1978 as personal living expenses. All records, including those records pertaining to the Florida checking account, were made available to the Audit Division for examination. The Audit Division offered no explanation as to why it did not include changes in the Florida checking account in the net worth analyses. The \$4,781.85 deposited into the Florida checking account was used by petitioner to pay those personal living expenses incurred during a stay in Florida during 1978 of approximately

one-month. Petitioner maintains that he should be given credit for \$4,781.85 since it represented a nontaxable source of funds expended in 1978.

9. Petitioner argues that a portion of the balance of the nontaxable insurance proceeds which remain unaccounted for, i.e. \$14,065.67 (\$18,847.52 less \$4,781.85), was converted into cash and utilized in 1978 to purchase a "loader" in the amount of \$10,910.00. The check from Prudential Insurance Company in the amount of \$10,029.10 was deposited into petitioner's business checking account in 1977. No documentary evidence was adduced at the hearing to show that the two remaining checks from Prudential Insurance Company (\$1,000.00 and \$5,036.57) were converted to cash, nor could petitioner recall during his testimony whether said checks were cashed or deposited into one of his bank accounts. No credible evidence was presented to show that the "loader" purchased in 1978 for \$10,910.00 was purchased with cash received from insurance proceeds.

10. From approximately August, 1975 to February, 1978, petitioner's nephew, one Richard Fairy, was disabled and unable to work. Mr. Fairy borrowed a total sum of \$7,000.00 from petitioner during the period of his disability. Petitioner loaned the \$7,000.00 to his nephew via numerous cash advances generally averaging between two to three hundred dollars. No written record was kept by petitioner regarding the loan of these funds to his nephew.

11. In February, 1978, Mr. Fairy's disability claim was settled and he gave petitioner a check in the sum of \$2,000.00 in partial repayment of the \$7,000.00 loan. The balance due of \$5,000.00 was repaid to petitioner in \$500.00 cash increments during 1978 and 1979. No written record was kept by petitioner concerning the cash payments received from his nephew in repayment of the \$5,000.00 balance due. Petitioner's testimony with respect to the loan of \$7,000.00 to his nephew and his subsequent receipt of \$5,000.00 in cash from

his nephew in repayment of said loan is found credible. The Audit Division allowed petitioner credit for the \$2,000.00 loan repayment which was evidenced by a cancelled check, but no credit for the \$5,000.00 repaid in cash.

12. Petitioner maintains that he and his wife had accumulated approximately \$38,000.00 in cash which was kept in a safe deposit box and that a portion of said cash was utilized during 1978 and 1979. Submitted into evidence was an affidavit from Mary Lake (now deceased) indicating that she was gainfully employed from 1948 to 1974 and that during said period she had accumulated through savings and stock purchases a total of approximately \$13,000.00. The affidavit further states that the \$13,000.00 was kept in the safe deposit box and that between 1974 and 1978 the affiant made various loans to her husband to assist him in his business.

Petitioner also alleges that he collectively received approximately \$18,000.00 as the result of being a beneficiary in both his aunt's estate (deceased in 1975) and his mother's estate (deceased in 1976). Funds alleged to have been received from these estates were also kept in the safe deposit box. No evidence was presented indicating the number of times the safe deposit box was entered. Also, petitioner kept no record of cash deposited in or withdrawn from the safe deposit box. Finally, no documentary evidence was submitted indicating the amount of the distribution, if any, received from each estate.

13. Petitioner did not argue nor was any evidence presented with regard to the penalties asserted pursuant to Tax Law section 685(b) for negligence and Tax Law section 685(c) for underpayment of estimated tax.

CONCLUSIONS OF LAW

A. That pursuant to the stipulation entered into between petitioner and the Audit Division (Finding of Fact "4", supra), the proposed understatement of income for 1979 is to be reduced by \$900.00.

B. That petitioner has sustained his burden of proof [Tax Law sections 722 and 689(e)] to show that in 1978 he utilized \$4,781.85 of nontaxable insurance proceeds to pay for certain personal living expenses incurred during a stay in Florida of approximately one-month. Accordingly, the proposed understatement of income for 1978 is to be reduced by \$4,781.85.

C. That petitioner has also sustained his burden of proof to show that he received \$5,000.00 in cash from his nephew in repayment of a loan. Since the record contains no details as to the amount of repayment received in each of the years at issue, it is determined for the purposes of this decision that \$2,500.00 was repaid in each of the years 1978 and 1979. Accordingly, the proposed understatements of income for 1978 and 1979 are each to be reduced by \$2,500.00.

D. That petitioner has failed to sustain his burden of proof to show that the "loader" purchased in 1978 for \$10,910.00 was purchased with cash received from insurance proceeds (Finding of Fact "9", supra).

E. That petitioner has also failed to sustain his burden of proof to show that cash was withdrawn from a safe deposit box and utilized during the years at issue. Petitioner kept no record of amounts deposited into or withdrawn from said safe deposit box. No evidence was presented as to how often the safe deposit box was entered and the documentary evidence submitted to substantiate the source of the cash accumulated in said safe deposit box was incomplete and unconvincing. Petitioner's testimony concerning the accumulation of \$38,000.00


in cash in the safe deposit box and his subsequent use of said cash during the years 1978 and 1979 was vague and/or unpersuasive.


F. That the petition of Francis Lake and Mary Lake (now deceased) is granted to the extent indicated in Conclusions of Law "A", "B" and "C", supra; that the Audit Division is directed to recompute the Notice of Deficiency dated September 10, 1981 consistent with the decision rendered herein; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985


PRESIDENT

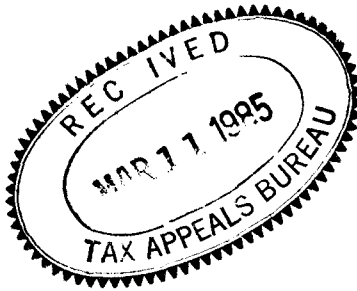

COMMISSIONER


COMMISSIONER

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

9. FWD

Francis & Mary Lake
11051 W. Center St. Ext.
Medina, NY 14103



AUTHORIZED TIME FOR FORWARDING HAS
EXPIRED.

CERTIFIED

P 693 169 539

MAIL

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

February 6, 1985

Francis & Mary Lake
11051 W. Center St. Ext.
Medina, NY 14103

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Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Lance J. Mark
Mack, Mark & Associates
S.A. Cook Bldg., Suite 6, 534 Main St., Box 248
Medina, NY 14103
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
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of	:	
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FRANCIS LAKE AND MARY LAKE	:	DECISION
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CONCLUSIONS OF LAW

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in cash in the safe deposit box and his subsequent use of said cash during the years 1978 and 1979 was vague and/or unpersuasive.

F. That the petition of Francis Lake and Mary Lake (now deceased) is granted to the extent indicated in Conclusions of Law "A", "B" and "C", supra; that the Audit Division is directed to recompute the Notice of Deficiency dated September 10, 1981 consistent with the decision rendered herein; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

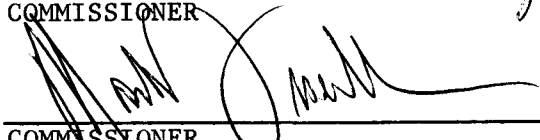
FEB 06 1985



PRESIDENT



COMMISSIONER



COMMISSIONER