

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George & Louise Stanislowsky :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income & :
Unincorporated Business Taxes under Articles 22 & :
23 of the Tax Law for the Year 1980. :
:

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 21st day of August, 1985, he served the within notice of Decision by certified mail upon George & Louise Stanislowsky, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George & Louise Stanislowsky
P.O. Box 49
Rock City Falls, NY 12863

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
21st day of August, 1985.

David Parchuck

William J. Haglund

Authorized to administer oaths
pursuant to Tax Law section 174

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

August 21, 1985

George & Louise Stanislowsky
P.O. Box 49
Rock City Falls, NY 12863

Mr. & Mrs. Stanislowsky:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE STANISLOWSKY AND LOUISE STANISLOWSKY	:	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 Year 1980.	:	

Petitioners George Stanislawsky and Louise Stanislawsky, P.O. Box 49, Rock City Falls, New York 12863, 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 year 1980 (File No. 46285).

A formal hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on April 25, 1985 at 9:15 A.M., with additional evidence to be submitted by May 23, 1985. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether a field audit adjustment attributing additional income to petitioners for the tax year 1980 was proper.

FINDINGS OF FACT

1. Petitioners, George Stanislawsky and Louise Stanislawsky, timely filed a New York State Income Tax Resident Return (Form IT-201) for the year 1980. They did not file an unincorporated business tax return.

2. On November 22, 1982, as a result of a field audit, the Audit Division issued to petitioners a Statement of Audit Changes asserting additional income

to petitioners in the amount of \$7,970.20 for the year 1980, resulting in additional personal income tax of \$381.68 and unincorporated business tax of \$37.20. The Income Tax Field Audit Report indicated that the adjustment of \$7,970.20 included two unexplained bank deposits of \$4,800.00 and \$3,000.00. On February 25, 1983, the Audit Division issued a Notice of Deficiency asserting additional tax due for 1980 in the amount of \$418.88, plus interest.

3. At a pre-hearing conference conducted pursuant to 20 NYCRR 601.4, the Audit Division revised its assessment of additional tax due from \$418.88 to \$113.92. This revision resulted from the allowance of \$4,800.00 which the petitioners were able to substantiate as having been attributable to a loan repayment from Kathy Harrison, daughter of the petitioners. As a result of this adjustment of \$4,800.00, only the amount of \$3,170.20 remains at issue as unsubstantiated income and no unincorporated business tax is due from petitioners. Any issue regarding petitioners' liability for such unincorporated business tax is therefore rendered moot.

4. Petitioners' son, George W. Stanislawsky, made a cash gift to petitioners in March, 1980 in the amount of \$3,000.00. This was established by petitioners' credible testimony at the hearing supplemented by documentary evidence submitted after the hearing.

CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law places the burden of proof on petitioner except in three specifically enumerated instances, none of which are at issue herein.

B. That petitioners sustained their burden of proof to substantiate that that the amount of \$3,000.00 received by petitioners in 1980 was attributable

to a gift received from their son. Accordingly, the adjustment for additional income is reduced by \$3,000.00.

C. That petitioners have failed to meet their burden of proof to substantiate that the remaining sum of \$170.20 was not additional income to petitioners in tax year 1980.


D. That the petition of George Stanislawsky and Louise Stanislawsky is granted to the extent provided in Conclusion of Law "B", supra, and, except as so granted, the petition is in all other respects denied.

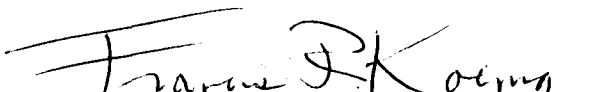
E. That the Audit Division is hereby directed to modify the Notice of Deficiency dated February 25, 1983 to be consistent with the decision rendered herein.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 21 1983


PRESIDENT


COMMISSIONER


COMMISSIONER