

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Paul & Doreen Panza :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article(s) 22 of the Tax Law :
for the Years 1980 - 1982.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 17th day of June, 1986, he/she served the within notice of Decision by certified mail upon Paul & Doreen Panza the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul & Doreen Panza
321 South Pecan St.
Lindenhurst, New York 11757

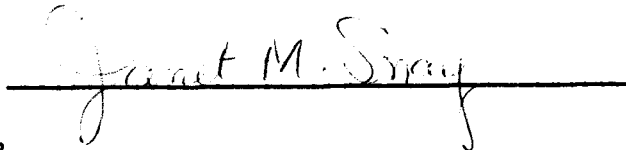
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
17th day of June, 1986.



Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Paul & Doreen Panza :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article(s) 22 of the Tax Law :
for the Years 1980 - 1982.

State of New York :
ss.:
County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 17th day of June, 1986, he served the within notice of Decision by certified mail upon Dominic R. Massaro, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dominic R. Massaro
Florie, Massaro & Vignola
2626 E. Tremont Ave.
Bronx, NY 10461

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
17th day of June, 1986.

Janet M. Snay

Daniel J. Ravello
Authorized to administer oaths
pursuant to Tax Law section 174

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

June 17, 1986

Paul & Doreen Panza
321 South Pecan St.
Lindenhurst, New York 11757

Dear Mr. & Mrs. Panza:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Dominic R. Massaro
Fiorie, Massaro & Vignola
2626 E. Tremont Ave.
Bronx, NY 10461

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PAUL & DOREEN PANZA : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1980, 1981 and :
1982. :

Petitioners Paul and Doreen Panza, 321 South Pecan Street, Lindenhurst, New York 11757 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 1980, 1981 and 1982 (File No. 57693).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1985 at 10:45 A.M. Petitioners appeared by Dominic R. Massaro, Esq. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly issued notices of deficiency to petitioners for the years 1980, 1981 and 1982 in accordance with the provisions of section 681(a) of the Tax Law and if so,

II. Whether petitioners filed timely petitions for redetermination of said deficiencies.

FINDINGS OF FACT

1. On August 16, 1984, the Audit Division issued a Notice of Deficiency against petitioners Paul Panza and Doreen Panza which asserted additional personal income tax of \$5,573.00 for 1980. A second notice was issued to

petitioners on the same date covering the years 1981 and 1982 for taxes due of \$15,008.07. Said notices were mailed to petitioners on August 16, 1984 at 321 S. Pecan Street, Bronx, N.Y. 11757. The Tax Appeals Bureau received a petition for redetermination of the deficiency for 1980 on November 26, 1984. Petitioners did not file a petition with respect to the notice issued for 1981 and 1982.

2. On December 21, 1984, the Tax Appeals Bureau advised petitioners that the petition received on November 26, 1984 was not filed within ninety days of the mailing of the Notice of Deficiency for 1980 and denied petitioners a pre-hearing conference on the merits of their petition. The Bureau did however, grant a hearing on the timeliness of the filing of the petition.

3. During the years at issue, petitioners resided at 321 South Pecan Street, Lindenhurst, New York 11757. Petitioner Paul Panza admitted that he received the notice for 1980 approximately three weeks after the mailing date. Petitioners did not receive the notice issued for 1981 and 1982.

4. Petitioners listed their address as 321 South Pecan Street, Bronx, New York 11757 on their New York State and New York City income tax return filed for 1980. For the 1981 and 1982 returns, they showed their address as 321 South Pecan Street, Lindenhurst, New York 11757.

5. Petitioner conceded that except for the address shown on the notices, the Audit Division followed normal mailing procedures for notices of deficiency.

CONCLUSIONS OF LAW

A. That section 681(a) of the Tax Law provides, in relevant part, as follows:

"a notice of deficiency shall be mailed by certified or registered mail to the taxpayer at his last known address in or out of this state." (Emphasis supplied).

Last known address means the address given in the last return filed by him, unless subsequent to the filing of such return the taxpayer shall have notified the tax commission of a change of address [Tax Law section 691(b)].

B. That the Audit Division did not mail the notices of deficiency to petitioners at their "last known address" as required by sections 681(a) and 691(b) of the Tax Law. Despite the Audit Division's use of an incorrect address there was actual receipt by petitioners of the notice of deficiency for 1980 which is the ultimate purpose of section 681(a) of the Tax Law. Actual receipt by the taxpayer of the notice is sufficient, even if it was not sent to the last known address (Delman v. Comm'r of Internal Revenue, 384 F2d 929 (3rd Cir. 1967); Green v. United States, 437 F. Supp. 334 (1977)). Under such circumstances the ninety day period for filing a petition for redetermination of a deficiency will commence to run as of the date of receipt. [Matter of AAA Sign Company, State Tax Comm., December 31, 1984; cf. Mc Partlin v. Comm'r of Internal Revenue Service, 653 F2d 1185, (7th Cir. 1981)]. The Audit Division does not dispute that the petition filed on November 26, 1984 was filed within ninety days of actual receipt of the notice of deficiency for 1980. Accordingly, petitioners are entitled to a hearing on the merits of the case as raised by their petition for the year 1980. (Matter of AAA Sign Company, supra).


C. That with respect to the notice issued for 1981 and 1982, it was neither mailed to petitioners' last known address nor actually received by petitioners. Therefore, the Audit Division did not properly notify petitioners of their deficiency for said years and, without such notification, the Notice of Deficiency is invalid and the Tax Commission lacks jurisdiction over the years 1981 and 1982.

D. That with respect to the year 1980, the petition of Paul and Doreen Panza is remanded back to the Tax Appeals Bureau for further proceedings not inconsistent herewith.

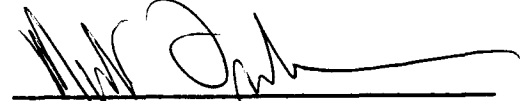
DATED: Albany, New York

STATE TAX COMMISSION

JUN 17 1986


PRESIDENT


COMMISSIONER


COMMISSIONER