

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

James & Claire Testa

:

:

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 Year 1978.

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, 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 27th day of March, 1986, he/she served the within notice of decision by certified mail upon James & Claire Testa the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James & Claire Testa
20 Amesworth Ct.
Middie Island, NY 11953

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
27th day of March, 1986.

David Parchuck

Janet M. Smay

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

James & Claire Testa

:

:

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 Year 1978.

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, 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 27th day of March, 1986, he served the within notice of decision by certified mail upon Marc Fleschner, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marc Fleschner
430 Chamberline St.
East Meadow, NY 11554

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
27th day of March, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 27, 1986

James & Claire Testa
20 Amesworth Ct.
Middie Island, NY 11953

Dear Mr. & Mrs. Testa:

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

Petitioner's Representative:
Marc Fleschner
430 Chamberline St.
East Meadow, NY 11554

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES TESTA AND CLAIRE TESTA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1978.	:	

Petitioners, James Testa and Claire Testa, 20 Amesworth Court, Middle Island, New York 11953, 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 1978 (File No. 39165).

On July 25, 1985, petitioners advised the State Tax Commission, in writing, that they desired to waive a formal hearing and submit the case to the State Tax Commission upon the entire record contained in the file, with submission of additional evidence and documents by September 30, 1985. After due consideration of said record, the Commission renders the following decision.

ISSUE

Whether the Audit Division properly determined petitioners' 1978 income based on the bank deposits method of income reconstruction.

FINDINGS OF FACT

1. James Testa and Claire Testa (hereinafter "petitioners") timely filed a joint New York State Income Tax Resident Return for the year 1978 whereon they reported total income of \$5,715.00, comprised of wages reported by Mr. Testa of \$5,330.00 and interest income of \$385.00.

2. On February 26, 1982, the Special Investigations Bureau of the Audit Division issued a Statement of Audit Changes to petitioners wherein, as the

result of a field audit, their 1978 gross income was determined to be \$31,692.53. Accordingly, a Notice of Deficiency was issued against petitioners on April 7, 1982 asserting personal income tax of \$2,296.95, plus interest of \$684.80, for a total due of \$2,981.75.

3. Information received by the Special Investigations Bureau indicated, inter alia, that Mr. Testa received a substantial sum of cash off the books from his employer during the year at issue. Based on such information, the Audit Division decided to examine petitioners' bank deposits. Such examination revealed that petitioners made total deposits of \$31,692.53 during 1978. This amount was determined to be their gross income for said year.

4. Petitioners alleged that the aforestated bank deposits represented loan repayments from one Theodore Koryowski. The file contains no documentation to support such allegation.

CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law provides that in any case before the Tax Commission, the burden of proof shall be upon the petitioner except for three issues, none of which are present in the instant case.

B. That petitioners have failed to sustain their burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that their bank deposits represented loan repayments.

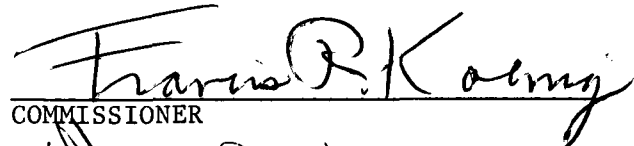
C. That the petition of James Testa and Claire Testa is denied and the Notice of Deficiency issued April 7, 1982 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 27 1986


PRESIDENT


COMMISSIONER


COMMISSIONER