

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gail Markowitz : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for :
Refund of New York State Personal Income Tax :
under Article 22 of the Tax Law and New York :
City Personal Income Tax under Chapter 46, :
Title T of the Administrative Code of the City :
of New York for the Year 1978.

State of New York :

ss.:

County of Albany :

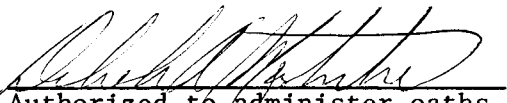
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of March, 1987, he/she served the within notice of Decision by certified mail upon Gail Markowitz the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

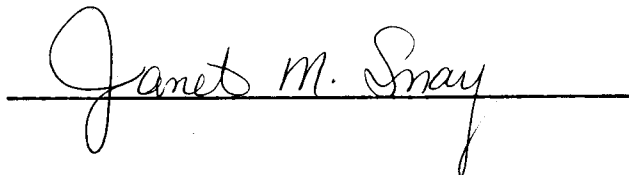
Gail Markowitz
410 N.W. 65th Terrace
Margate, FL 33063

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
13th day of March, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

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of :
Gail Markowitz :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for :
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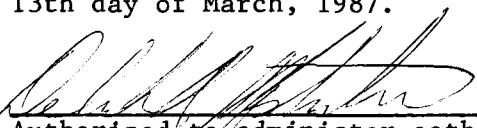
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of March, 1987, he served the within notice of Decision by certified mail upon Joseph Reisman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

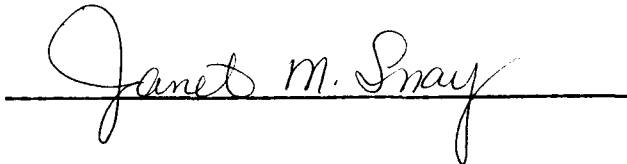
Joseph Reisman
2751 Coney Island Ave.
Brooklyn, NY 112235004

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
13th day of March, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

March 13, 1987

Gail Markowitz
410 N.W. 65th Terrace
Margate, FL 33063

Dear Ms. Markowitz:

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 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, 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:
Joseph Reisman
2751 Coney Island Ave.
Brooklyn, NY 112235004

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GAIL MARKOWITZ	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law and New York	:	
City Personal Income Tax under Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the Year 1978.	:	

Petitioner, Gail Markowitz, 410 N.W. 65th Terrace, Margate, Florida 33063, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1978 (File No. 43833).

On October 29, 1986, petitioner waived her right to a formal hearing and requested that the State Tax Commission render a decision based on the entire record contained in her file. After due consideration, the State Tax Commission hereby renders the following decision.

ISSUE

Whether petitioner is entitled to claim a credit of \$3,627.43 for New York State income tax withheld from her compensation.

FINDINGS OF FACT

1. Petitioner, Gail Markowitz, timely filed a New York State and New York City income tax resident return for 1978 wherein she computed a total tax due of \$7,004.85. On her return petitioner claimed a credit of \$3,627.00 for

"State Estimated Tax Paid¹", thereby leaving a balance due of \$3,377.85 (\$7,004.85 - \$3,627.00). Petitioner did not remit payment of the balance due as shown on her 1978 return.

2. The Audit Division had no record of petitioner having filed and paid \$3,627.00 into a 1978 estimated tax account and, on August 1, 1979, a computer billing was issued against petitioner for tax due of \$7,004.85, plus penalty and interest.

3. Petitioner claimed a refund of \$941.00 on her 1981 New York State and New York City income tax return, however, said refund was applied by the Audit Division to Ms. Markowitz's 1978 liability. Petitioner filed a claim for the years 1978 and 1981 seeking refunds of \$5,935.00 and \$941.00, respectively. On February 28, 1983, the Audit Division denied petitioner's claim for refund for the years 1978 and 1981 and Ms. Markowitz immediately thereafter timely filed a petition for refund with the State Tax Commission.

4. The Internal Revenue Service audited petitioner's 1978 U.S. Individual Income Tax Return and, as the result of said examination, Federal taxable income was reduced to a negative amount. The Audit Division concedes that petitioner's New York State and City taxable income for 1978 is also a negative amount and that no income tax is due for said year. The Audit Division further concedes that since no tax is due for 1978, petitioner is entitled to a refund of \$941.00 for the 1981 refund which was applied to her 1978 liability. The only issue left in dispute is whether petitioner had \$3,627.43 of New York

1 Petitioner erroneously entered the \$3,627.00 figure on the line for estimated tax payments. It is undisputed that petitioner intended to claim the \$3,627.00 figure as a credit for New York State tax withheld.

State tax withheld from her 1978 compensation and is thus entitled to a refund of said amount.

5. During 1978, petitioner was employed in New York as a sales representative for the Minieri Realty Corporation ("Minieri"), 1125 U.S. Highway 19S, New Port Richey, Florida. Petitioner received commission income of \$72,887.58 from Minieri and said amount was reported on a Federal Form 1099-MISC. Said form also contained the following information:

"Fed Inc Tax W/H: 6,743.65
State Inc Tax W/H: 3,627.43"

6. The Audit Division asserts that petitioner is not entitled to claim credit for \$3,627.43 of New York State tax withheld since it could not verify that Minieri paid over withholding taxes of \$3,627.43 to New York on petitioner's behalf and also since the Federal Form 1099 does not indicate to what state the tax withheld of \$3,627.43 was paid.

7. The sum of \$3,627.43 of New York State income tax was withheld by Minieri from petitioner's 1978 compensation and said amount was paid over to the Audit Division by Minieri.

CONCLUSIONS OF LAW


A. That petitioner has sustained her burden of proof to show that \$3,627.43 of New York State income tax was withheld from her compensation and remitted to the Audit Division. Since there is no New York State or City tax due for 1978, petitioner is entitled to a refund of the \$3,627.43 tax withheld.

B. That the petition of Gail Markowitz is granted; and that the Audit Division is directed to refund to petitioner the sum of \$3,627.43, plus interest.


DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987


PRESIDENT


COMMISSIONER


COMMISSIONER