

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leon H. Frank Jr. :
and Dorothy M. Frank : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Years 1967,1968. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of June, 1980, he served the within notice of Decision by certified mail upon Leon H. Frank Jr., and Dorothy M. Frank, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leon H. Frank Jr.
and Dorothy M. Frank
145 Brooks Ave.
Vestal, NY 13850

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 18, 1980

Leon H. Frank Jr.
and Dorothy M. Frank
145 Brooks Ave.
Vestal, NY 13850

Dear Mr. & Mrs. Frank:

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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEON H. FRANK, JR. and DOROTHY M. FRANK	:	DECISION
for Redetermination of Deficiencies or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1967 and 1968.	:	

Petitioners, Leon H. Frank, Jr. and Dorothy M. Frank, 145 Brooks Avenue, Vestal, New York 13850, filed a petition for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1967 and 1968 (File No. 01533).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, 44 Hawley Street, Binghamton, New York, on September 13, 1979 at 1:15 P.M. Petitioner, Leon H. Frank, Jr., appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether a "source and application of funds" method of auditing used by the Income Tax Bureau properly reflected petitioners' tax liability for 1967 and 1968.

FINDINGS OF FACT

1. Petitioners, Leon H. Frank, Jr. and Dorothy M. Frank, filed New York State income tax resident returns for 1967 and 1968.

2. Petitioner Leon H. Frank, Jr. operated Leon's Cleaners in Binghamton with branch outlets in Vestal and Endicott. In conjunction with an audit of Leon's Cleaners, the Income Tax Bureau conducted a "source and application of funds" audit of petitioners, along with an analysis of petitioners' living expenses. The Bureau determined that a cash draw by petitioner Leon H. Frank, Jr. of \$5,200.00 a year from Leon's Cleaners was reasonable in the absence of complete books and records. The Bureau also found unreported income from ministerial work in each of the years at issue. On April 12, 1971, the Income Tax Bureau issued two notices of deficiency against petitioners for the years 1967 and 1968. On the Notice for 1967, the Bureau imposed additional personal income tax of \$236.96, plus interest of \$42.56, for a total of \$279.52. On the Notice for 1968, the Bureau imposed additional personal income tax of \$287.28, plus interest of \$34.36, for a sum of \$321.64.

3. Petitioners argued that the Income Tax Bureau's estimate for a cash draw of \$5,200.00 was erroneous. They contended that they received over \$10,000.00 in 1962 and \$8,000.00 in 1967 from the Estates of the parents of Dorothy M. Frank. Petitioners also contended they had cash available from a partnership (ice cream stand) which the petitioners operated with their children. However, petitioners failed to submit any satisfactory documentary evidence to support their contentions.

CONCLUSIONS OF LAW

A. That the Income Tax Bureau's reconstruction of income will be presumed correct with the burden upon the petitioner to disprove the Bureau's computation, where the books do not clearly reflect income.

B. That petitioners did not sustain the burden of proof imposed by section 689(e) of the Tax Law, to show that the method of auditing used by the Income Tax Bureau did not properly reflect their tax liability for 1967 and 1968.

C. That the petitions of Leon H. Frank, Jr. and Dorothy M. Frank, are denied and the notices of deficiency issued April 12, 1971 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUN 18 1980

STATE TAX COMMISSION

James H. Tully

PRESIDENT

Thomas H. Frank

COMMISSIONER

Francis R. Koening

COMMISSIONER