

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stanley & Viola Zubawicz :
d/b/a Town Delicatessen : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Unincorporated Business Tax :
under Article 23 of the Tax Law :
for the Year 1972. :

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 7th day of September, 1979, he served the within notice of Decision by certified mail upon Stanley Zubawicz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Stanley Zubawicz
25 Pavillion Rd.
Suffern, NY 10901

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 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
7th day of September, 1979.

Marcy Dominici

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
Stanley & Viola Zubawicz :
d/b/a Town Delicatessen : AFFIDAVIT OF MAILING
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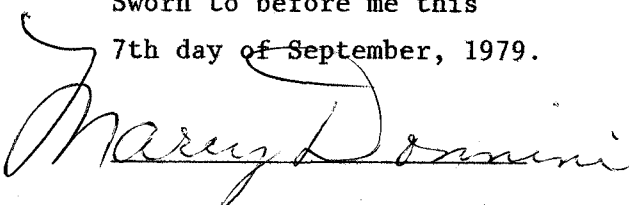
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 7th day of September, 1979, he served the within notice of Decision by certified mail upon Stanley & Viola Zubawicz, d/b/a Town Delicatessen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

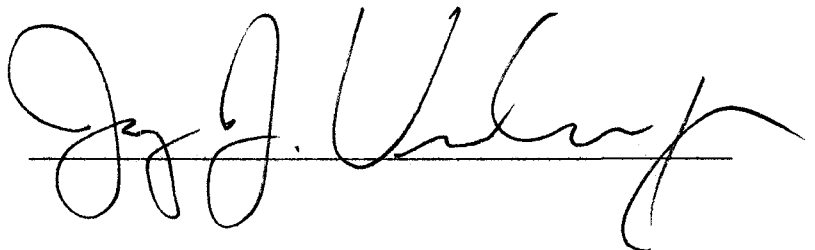
Stanley & Viola Zubawicz
d/b/a Town Delicatessen
30 Lafayette Ave.
Suffern, NY 10901

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
7th day of September, 1979.


Mary Dominici


Jay Vredenburg

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 7, 1979

Stanley & Viola Zubawicz
d/b/a Town Delicatessen
30 Lafayette Ave.
Suffern, NY 10901

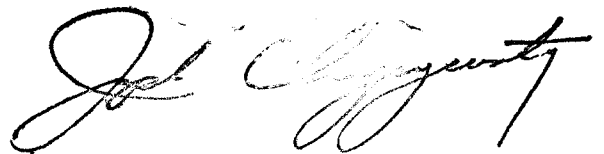
Dear Mr. & Mrs. Zubawicz:

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) 722 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,



cc: Petitioner's Representative
Stanley Zubawicz
25 Pavillion Rd.
Suffern, NY 10901
Taxing Bureau's Representative

STATE TAX COMMISSION

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 9, 1977 at 10:45 A.M. and on March 24, 1977 at 10:45 A.M. Petitioner appeared by Stanley Zubawicz, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioners omitted income from their partnership return for the fiscal year ending June 30, 1972.

1. A New York State partnership return was filed on behalf of Town Delicatessen for the fiscal year ending June 30, 1972.

2. On October 27, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Viola Zubawicz and Stanley Zubawicz, individually and as co-partners d/b/u the firm name of Town Delicatessen. The Statement of Audit Changes was based on a field audit performed by the Income Tax Bureau for the fiscal year ending June 30, 1972. In accordance with said Statement, the Income Tax Bureau issued a Notice of Deficiency on October 27, 1975 asserting unincorporated business tax of \$497.22, plus interest of \$90.48, for a total of \$587.70.

3. The method used by the Income Tax Bureau in recomputing petitioners' income was based on the "Source and Application of Funds" method which resulted in an unexplained source of funds of \$11,366.00 for the fiscal year ending June 30, 1972.

4. The New York State partnership return filed by petitioners indicated that the entire profit was distributed to Viola Zubawicz.

5. Petitioners contended that the Income Tax Bureau did not take into consideration the cash available from all sources during the fiscal year ending June 30, 1972. Petitioners further contended that the Income Tax Bureau duplicated expenses and did not take into consideration transfers of funds from checking and savings accounts, in arriving at the unexplained cash available.

6. Petitioners did not submit any additional documentary evidence regarding additional sources of income, duplication of expenses and transfers of funds from checking and savings accounts.

CONCLUSIONS OF LAW

A. That petitioners failed to sustain the burden of proof required (in accordance with the meaning and intent of section 689(e) of the Tax Law) to show that they did, in fact, have other sources of funds available for the fiscal year ending June 30, 1972.

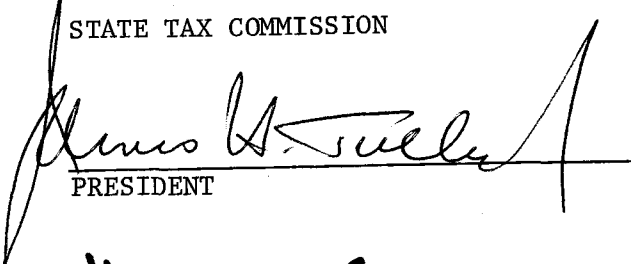
B. That petitioner did not sustain the burden of proof required (within the meaning and intent of section 689(e) of the Tax Law) to show that the method used by the Income Tax Bureau was inaccurate and/or incorrect.

C. That the petition of Viola Zubawicz and Stanley Zubawicz, individually and as co-partners, d/b/u the firm name of Town Delicatessen is denied and the Notice of Deficiency issued on October 27, 1975 is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York

SEP 7 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

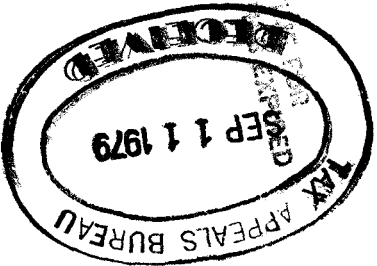
ALBANY, N. Y. 12227

Unclaimed
Insufficient Address
No such office in state
Do not return in this envelope

RETURN TO SENDER
REASON CHANGED

Stanley & Viola Zubawicz
d/b/a Town Delicatessen
30 Lafayette Ave.
Suffern, NY 10901

AUTHORIZED TO
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473631

ALWAYS

USE ZIP

CODE



