

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Anthony Barnell & Louis Cacciola :
d/b/a Taft Grove Partnership : 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 Years 1970 - 1972.

State of New York
County of Albany

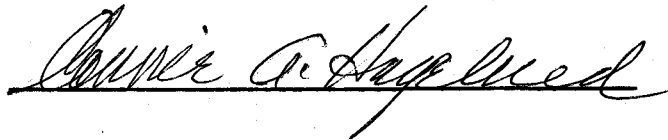
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of June, 1983, she served the within notice of Decision by certified mail upon Anthony Barnell & Louis Cacciola, d/b/a Taft Grove Partnership the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony Barnell & Louis Cacciola
d/b/a Taft Grove Partnership
1130 Wolf St.
Syracuse, NY 13208

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
24th day of June, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Anthony Barnell & Louis Cacciola :
d/b/a Taft Grove Partnership :

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 Years 1970 - 1972.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of June, 1983, she served the within notice of Decision by certified mail upon Richard E. Silverman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard E. Silverman
Gubman, Lowenstein & Silverman
4309 Genesee St.
Dewitt, NY 13214

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
24th day of June, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

June 24, 1983

Anthony Barnell & Louis Cacciola
d/b/a Taft Grove Partnership
1130 Wolf St.
Syracuse, NY 13208

Gentlemen:

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 & 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 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: Petitioner's Representative
Richard E. Silverman
Gubman, Lowenstein & Silverman
4309 Genesee St.
Dewitt, NY 13214
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ANTHONY BARNELL AND LOUIS CACCIOLA	:	DECISION
d/b/a TAFT GROVE PARTNERSHIP	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1970	:	
through 1972.	:	

Petitioners, Anthony Barnell and Louis Cacciola, d/b/a Taft Grove (Partnership), 1130 Wolf Street, Syracuse, New York 13208, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1970 through 1972 (File No. 17425).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on April 30, 1981 at 1:45 P.M., with all briefs to be submitted by June 2, 1982. Petitioners appeared by Richard E. Silverman, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined the amount of unincorporated business tax liability of petitioners for the years in issue.

II. Whether petitioners are liable for the fraud penalty pursuant to section 689(e) of the Tax Law for the years in issue.

FINDINGS OF FACT

1. On November 22, 1976, as the result of a field audit, the Audit Division issued a Notice of Deficiency against petitioners, Anthony Barnell and

Louis Cacciola d/b/a Taft Grove Partnership (the "Partnership") in the amount of \$5,272.93 plus fraud penalty of \$2,636.47 and interest of \$1,539.57 for a total due of \$9,448.97 for the years 1970 through 1972.

2. On February 26, 1976, Anthony Barnell and Louis Cacciola each pleaded guilty in the Albany City Police Court to two counts of filing false and fraudulent New York State Combined Income Tax Returns with the intent to evade the payment of tax for the years 1971 and 1972. They admitted to the fraudulent actions in 1971 and 1972 but protested the amounts asserted to be due by the Audit Division.

3. The Partnership operated two bar and grills, the Taft Grove on Taft Road, East Syracuse, New York and the New Wolf Inn at 1130 Wolf Street, Syracuse, New York. Petitioners filed two Federal partnership returns for the businesses. Petitioners kept their business books and records in an informal manner. Business transactions were recorded on pieces of tablet paper which were subsequently given to the Partnership's accountant. The accountant did not have access to petitioners' bank deposit records and there were inconsistencies in sales figures as recorded.

4. The auditor deemed petitioners' records to be inadequate to conduct a proper audit and he performed an income reconstruction audit by the source and application of funds method. The auditor then turned over his findings to the Special Investigations Bureau which reconstructed income by the bank deposit method of audit. The auditors subpoenaed bank records of petitioners' business and personal accounts. The auditors examined the bank records to determine the amount of income received by petitioners during the period in issue. As a result of the audit, the auditors found a difference of approximately \$118,000 between actual income and income as reported on the Partnership returns for the

years at issue. Petitioners could offer no explanation for this discrepancy. One account, designated "the Sunshine Fund" by petitioners, contained income from the gross receipts of the business which was allegedly, to be set aside for petitioners' retirement. The receipts deposited in the aforesaid account were never shown to the Partnership's accountant when he prepared the Partnership's tax returns. Therefore, the income in the "Sunshine Fund" was not reported on the partnership returns.

5. Petitioners claimed that all of the Partnership's business and personal taxes due had been paid with the exception of the receipts found in the "Sunshine Fund" and that tax was due only on those receipts.

CONCLUSIONS OF LAW

A. That section 658(a) of the Tax Law (applicable by virtue of section 722 of the Tax Law) and 20 NYCRR 152.1 require that taxpayers keep sufficient records to show whether such persons are liable for tax. "In a situation where adequate records do not exist or access to them is not available, the government, in attempting to establish a violation of the income tax laws, may reconstruct a taxpayer's taxable base by any reasonable method" (United States v. Morse, 491 F.2d 149, 151). The poor condition of the Partnership's records was clearly a case for using an indirect method of reconstructing income.

B. That the source and application of funds and bank deposit methods of auditing are generally accepted indirect audit methods and were properly performed according to established accounting principles. The audit findings were uncontroverted by any documentary or other evidence submitted by petitioners.

C. That since the petitioners have pleaded guilty to evasion of personal income taxes involving the same income upon which the unincorporated business tax was asserted and since the income in the "Sunshine Fund" was not reported

on the partnership returns for 1971 and 1972 there is no reason to cancel the fraud penalty imposed pursuant to section 685(e) of the Tax Law. No proof of fraud or willful understatement was offered by the Audit Division for the year 1970 (fraud penalty for 1970 was computed to be \$782.22), therefore, fraud penalty for 1970 is cancelled.

D. That the petition of Anthony Barnell and Louis Cacciola d/b/a Taft Grove Partnership is granted to the extent indicated in Conclusion of Law "C"; that the Notice of Deficiency issued on November 22, 1976 is to be modified accordingly; and that, except as so modified, the Notice is sustained.

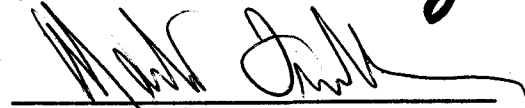
DATED: Albany, New York

STATE TAX COMMISSION

JUN 24 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS

ALBANY, N. Y. 12227

CLAIM CHECK
NO.

455287

☐ HOLD

DATE

6-28-83

1ST NOTICE

RETURN
TO
SENDER

BY NOTICE

RETURN

Detached from
PS Form 3849-A
Oct. 1980

CERTIFIED

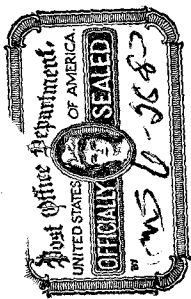
P 481 07 936

M/L

Anthony Barnell & Louis Gacciola
d/b/a Taft Grove Partnership
1130 Wolf St.
Syracuse, NY 13208

Anthony Barnell
6-28-83

SYRACUSE, NY
PM
28 JUN
1983



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

June 24, 1983

Anthony Barnell & Louis Cacciola
d/b/a Taft Grove Partnership
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Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard E. Silverman
Gubman, Lowenstein & Silverman
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Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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of	:	
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ANTHONY BARNELL AND LOUIS CACCIOLA	:	DECISION
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DATED: Albany, New York

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