

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS & BESSIE GOODMAN

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1965, 1966 &
1967

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro , 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 21st day of February , 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon Morris & Bessie
Goodman (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Morris & Bessie Goodman
76 Eastland Avenue
Rochester, New York 14618

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

21st day of February , 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS & BESSIE GOODMAN

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a Refund of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the (Year(s) 1965, 1966 & :
1967

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro , 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 21st day of February , 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sydney R. Rubin

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Sydney R. Rubin
Rubin, Levey & Battaglia
950 Crossroads Building
2 Main Street East - Rochester, New York 14614
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

21st day of February , 1973

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

February 21, 1973

**Morris & Bessie Goodman
76 Eastland Avenue
Rochester, New York 14618**

Dear Mr. & Mrs. Goodman:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MORRIS and BESSIE GOODMAN	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Personal Income and Unincor-	:	
porated Business Taxes under Article 22	:	
and 23 of the Tax Law for the Years 1965,	:	
1966 and 1967.	:	

Morris and Bessie Goodman petitioned for a redetermination of deficiencies in personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1965, 1966 and 1967. (File No. 72528793).

A formal hearing was held at the offices of the State Tax Commission, Rochester, New York, on January 20, 1972 before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Sydney R. Rubin, Esq. and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Does the evidence establish fraud in the taxpayers filing of personal income and unincorporated business tax returns for the years in issue?

FINDINGS OF FACT

1. Petitioners, Morris and Bessie Goodman, timely filed New York State income tax and unincorporated business tax returns for the years 1965, 1966 and 1967.

2. A Notice of Determination of deficiencies and fraud penalties in income and unincorporated business taxes for the years 1965, 1966 and 1967 were issued on August 25, 1969 against the taxpayers under File No. 72528793.

3. The taxpayer petitioned for redetermination of the deficiencies and penalties.

4. The tax agent on his examination obtained the books and records of the taxpayer. The records for the grocery business consisted of a book for purchases and one for sales and some boxes and bags of purchase invoices and cancelled checks.

5. The agent found purchases for 1965 understated by \$1,734.86. In 1967, the month of August, 1966, purchases were substituted as an estimate instead of 1967 purchases. The agent was told by Morris Goodman that he disposed of cash register tapes after recording them because they contained overrings and underrings and he knew no reason for keeping them.

6. The agent had prepared a statement of source and application of funds for the years in issue. At the bottom of his statement for 1965, 1966 and 1967, he wrote his conclusion "Difference assumed to be additional adjusted gross income" \$4,485.53, \$9,351.02, \$12,411.00. After appropriate adjustments for taxpayers' services, he also asserted unincorporated business tax for these increases in gross income.

7. The Income Tax Bureau also asserted a fraud penalty under 685(e) of the Tax Law.

8. Bessie Goodman had two safe deposit boxes but she did not open them for the agent. This was her second marriage.

9. Bessie Goodman testified that her funds and rental income were used for many of the items which constituted purchases and cost of living items of the taxpayers. Mrs. Goodman's funds from savings or the prior marriage are indefinite.

10. The taxpayers did not contest the agent's proposed deficiency and they reported the change in income to the Federal Government.

11. The taxpayers had no formal training in bookkeeping or keeping business records. They kept a record of purchases and sales and their checkbook records, the collection of invoices and turned these over to their accountant for preparation of their tax returns. They believed their returns to be correct.

12. The agent did not assign any cash on hand to the opening of the taxable period. He drew up a source and application of funds for the three prior years but there was no evidence to substantiate the statement.

CONCLUSIONS OF LAW

A. The understatement of purchases for the grocery business by \$1,734.86 for 1965 for over \$95,000.00 of purchases, or the type of records kept in the light of the taxpayers' background was not clear evidence of fraud. An "assumed" increase of income is not evidence of fraud. Further, the record is not clear with respect to opening cash on hand. While the deficiencies are sustained on the entire record, the evidence does not clearly show fraud.

B. The deficiencies in income tax and unincorporated business tax are sustained, but the fraud penalties are cancelled.

DATED: Albany, New York
February 21, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227



RETURNED TO SENDER
REASON CHECKED
Unclaimed _____
Addressee unknown _____
Insufficient Address _____
No such street _____
No such office in state _____
Do not re-mail in this envelope _____

[Handwritten signature]

Morris & Bessie Goodman

76 Eastland Avenue

Rochester, New York 14618

[Handwritten signature]

CERTIFIED

No. 287602

MAIL

MEMORANDUM

TO: Mr. Louis Etlinger, Chief, Review Unit
Att: Floyd Worden
Income Tax Bureau
Room 104, Building #8


DATE: 2/28/73

FROM: Hearing Unit
Room 214A, Building #9

RE: Morris & Bessie Goodman
76 Eastland Ave.
Rochester, New York 14618

SOCIAL SECURITY NO.

Please advise as to the last known address for the above named taxpayer.


L. Robert Leisner
Hearing Officer

Taxpayer's last known address is:

195 HIBISCUS DRIVE
ROCHESTER, NEW YORK