

POOR  
QUALITY  
THE FOLLOWING  
DOCUMENT (S)  
ARE  
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID A. GOLDNER

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

For a Redetermination of a Deficiency or  
a Refund of **Personal Income**  
Taxes under Article(s) 16 of the  
Tax Law for the Year(s) 1956

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 25th day of October , 1974, she served the within  
Notice of Decision (or Determination) by (~~certified~~) mail upon David A. Goldner

(~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. David A. Goldner

6 The Hemlocks  
Roslyn Estates  
Long Island, New York 11576

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

25th day of October , 1974.

Janet Mack

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

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

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**Dated:** Albany, New York

**October 25, 1974**

**Mr. David A. Goldner  
6 The Hemlocks  
Roslyn Estates  
Long Island, New York 11576**

**Dear Mr. Goldner:**

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

Please take further notice that pursuant to  
Section(s) **375** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **90 Days**  
from 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 relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**EDWARD ROOK**  
~~XXXXXXXXXXXXXX~~

**SECRETARY TO THE STATE TAX COMMISSION**

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
DAVID A. GOLDNER	:	DETERMINATION
for Revision or Refund of Personal	:	
Income Taxes under Article 16 of	:	
the Tax Law for the Year 1956.	:	

---

Applicant, David A. Goldner, filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1956. A formal hearing was held before Lawrence A. Newman, Esq., Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on March 31, 1971, and continued on May 5, 1971. The applicant appeared pro se. The Income Tax Bureau appeared by Edward H. Best, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Was a deficiency based on omission of additional income properly issued against applicant, David A. Goldner?

FINDINGS OF FACT

1. Applicant, David A. Goldner, filed a New York income tax resident return for the year 1956.

2. On April 14, 1960, the Special Investigations Bureau (on behalf of the Income Tax Bureau) issued a Notice of Additional Assessment of income tax, numbered AA-SIB-10,083, in the amount of \$7,245.13, including a penalty for fraud of 100% of the basic tax and maximum interest at 12% per annum.

3. On May 12, 1960, applicant filed an application for revision or refund which was denied on July 2, 1963 by the Special Investigations Bureau (on behalf of the Income Tax Bureau).

4. On August 28, 1963, applicant filed a demand for hearing.

5. The deficiency assessment issued against the applicant was computed by disallowing itemized business expenses and adding credits to loan accounts, the value of an asset acquired and additional fees. The latter items were added based upon information supplied to the Special Investigations Bureau by the Judicial Inquiry into the Conduct of Attorneys in the Second Department of the Appellate Division, Supreme Court of New York.

6. The record of the aforesaid Judicial Inquiry indicated that the applicant specialized in representing claimants in negligence cases. He generally worked on a fifty percent retainer which called for the client to assume the disbursements. He would arrange for the client to sign two checks over to him, the aforesaid checks having originated out of a recovery. A number of Goldner's former clients never received the checks in question nor the proceeds therefrom, but had merely endorsed those checks at Goldner's request.

7. The aforesaid Judicial Inquiry found that applicant, David A. Goldner, had "engaged in a deliberate and systematic scheme for substantially understating his net income through the device of issuing and cashing checks of which his clients falsely appeared to be the recipients and through the further device of not including reimbursements in his income".

8. While there is evidence of omitted income, there is not a sufficient showing of willfulness so as to prove fraud in this case.

CONCLUSIONS OF LAW

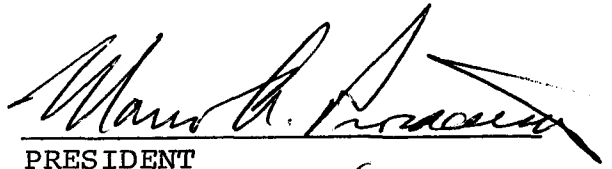
A. That applicant, David A. Goldner, omitted income from his income tax returns for the year 1956. Therefore, the Notice of Additional Assessment of income tax issued on April 14, 1960 is sustained.

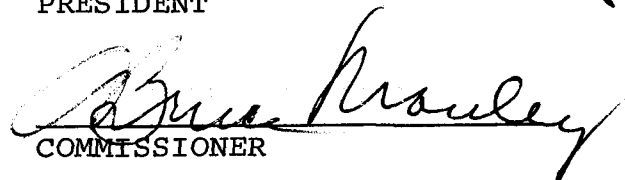
B. That, in the absence of clear evidence of willfulness, there is no finding of fraud in this case. Accordingly, the determination and penalty for fraud are hereby cancelled.

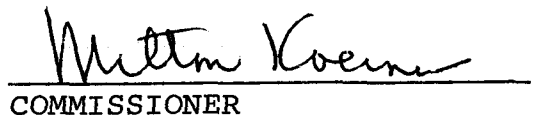
C. That the application of David A. Goldner is granted to the extent of cancelling the penalty for fraud and is in all respects denied.

DATED: Albany, New York  
October 25, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER