

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Moses & Maria Saraiva :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax & UBT :
under Article 22 & 23 of the Tax Law
for the Years 1974 & 1975. :

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Moses & Maria Saraiva, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Moses & Maria Saraiva
26 Belmont Pl.
Yonkers, NY 10701

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
20th day of June, 1980.

Joanne Krapp

E. J. Kelly

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

June 20, 1980

Moses & Maria Saraiva
26 Belmont Pl.
Yonkers, NY 10701

Dear Mr. & Mrs. Saraiva:

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 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	:	
MOSES SARAIVA and MARIA SARAIVA	:	DECISION
for Redetermination of Deficiencies or	:	
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Years 1974 and 1975.	:	

Petitioners, Moses Saraiva and Maria Saraiva, 26 Belmont Place, Yonkers, New York 10701, filed a petition for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for years 1974 and 1975 (File No. 19967).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 17, 1979 at 10:45 A.M. Petitioner Moses Saraiva appeared pro se and for his wife. The Audit Division appeared by Peter Crotty, Esq. (A. Schwadron, Esq., of counsel).

ISSUE

Whether adjustments made as a result of a field audit were proper.

FINDINGS OF FACT

1. Petitioners, Moses Saraiva and Maria Saraiva, timely filed joint New York State income tax resident returns for the years 1974 and 1975.
2. The Audit Division, using established audit procedures and techniques, conducted a field audit for the years 1974 and 1975 from books, records, documents and information furnished by petitioners, Moses Saraiva and Maria Saraiva.

3. As a result of a field audit, the Audit Division issued a Notice of Deficiency on June 27, 1977 against petitioners, Moses Saraiva and Maria Saraiva, imposing additional personal income tax and interest in the sum of \$501.58 for the years 1974 and 1975. The aforementioned deficiency was based on an attached Schedule of Audit Adjustments, which itemized the audit adjustments as follows:

<u>ITEM ADJUSTED</u>	<u>1974</u>	<u>1975</u>
Dues and Subscriptions	\$ 590.00	
Telephone Expense	100.00	\$ 100.00
Income Increased	1,205.00	1,147.00
Interest Expense		495.00
Sales Return and Allowance		1,000.00
Rental Income and Expenses		<u>1,420.00</u>
Total Adjustments	<u>\$1,895.00</u>	<u>\$4,162.00</u>

Petitioner conceded adjustments to telephone expense of \$100.00 for 1974 and 1975, to interest expense of \$495.00, and sales return and allowance of \$1,000.00 for 1975.

4. On June 27, 1977, the Audit Division issued another Notice of Deficiency against petitioner Moses Saraiva imposing additional unincorporated business tax and interest in the sum of \$226.97 for the years 1974 and 1975. This deficiency was based on audit adjustments, which were itemized as follows:

<u>ITEM ADJUSTED</u>	<u>1974</u>	<u>1975</u>
Dues and Subscriptions	\$ 590.00	
Telephone Expense	100.00	\$ 100.00
Rental Income and Expenses	(327.64)	(571.60)
Income Increased	1,205.00	1,147.00
Additional Allowance for Taxpayer's Services	(313.47)	
Interest Expense		495.00
Sales Returns and Allowance		<u>1,000.00</u>
Total Adjustments	<u>\$1,253.89</u>	<u>\$2,170.40</u>

5. Petitioner Moses Saraiva was a self-employed travel agent and real estate salesman during the years 1974 and 1975. He conducted business as a sole proprietorship under the name and style of Moses Travel Agency, with an office in Yonkers, New York.

6. Petitioner disputed the adjustment to "Dues and Subscriptions" for the year 1974 and submitted a ledger page which he contended listed checks for various books and novels. He argued that these books assisted him in learning and understanding the English language so that he could conduct his business in a more efficient manner.

7. The Audit Division increased petitioner's unincorporated business gross income by \$1,205.00 for year 1974 and \$1,147.00 for the year 1975, based on an analysis of petitioner's own books and records, which included his bank accounts. Petitioner contended that the additional income at issue represented transferred funds from Portugal. However, details supplied by petitioner as to the nature of these transactions were vague and unclear.

8. Petitioners, Moses Saraiva and Maria Saraiva, earned rental income and incurred rental expenses (from property located in New York State) during the years 1974 and 1975. This rental property was partially utilized for personal use for the year 1975, and for unincorporated business purposes for the years 1974 and 1975. However, petitioners failed to properly allocate expenses between personal use, unincorporated business use, and rental or income producing use. Petitioners did not dispute the allocation percentages determined and applied by the Audit Division, but did challenge the amounts subject to these percentages by contending that many of the rental expenses were attributable solely to the rental portion of the property. However, although given the opportunity to do so, petitioner failed to submit sufficient documentary evidence establishing his contentions.

9. An examination and review of the Schedule of Audit Adjustments for the year 1975 revealed a mathematical and/or clerical error of \$65.00 in favor of petitioners. The aforementioned \$65.00 error was a net figure after the application of appropriate allocation percentages. In addition, a deduction claimed and allowable pursuant to section 708(a) of the Tax Law, was not adjusted as a result of adjustments to net business income for the year 1975.

CONCLUSIONS OF LAW

A. That petitioners, Moses Saraiva and Maria Saraiva, have failed to sustain the burden of proof required by section 689(e) of the Tax Law to show that the adjustments made as a result of a field audit conducted by the Audit Division for the years 1974 and 1975 were improper.

B. That the petition of Moses Saraiva and Maria Saraiva is granted to the extent that:

- (1) The rental income and expense adjustment for personal income tax purposes for the year 1975 is decreased from \$1,420.00 to \$1,355.00 to correct the \$65.00 error pursuant to paragraph 9 of this decision.
- (2) The rental income and expense adjustment for unincorporated business tax purposes for the year 1975 is increased from \$571.60 to \$636.60 to correct the \$65.00 error pursuant to paragraph 9 of this decision.
- (3) The allowance for taxpayer's services claimed for the year 1975 in accordance with section 708(a) of the Tax Law is increased from \$3,534.00 to \$3,955.08, as a result of adjustments increasing petitioner's net business income.

C. That the Audit Division is hereby directed to accordingly modify the two notices of deficiency issued June 27, 1977 to conform with Conclusion of Law "B"; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER