

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

CLINTON C. MATHISON

DECISION

for Redetermination of a Deficiency or for
Refund of New York State Personal Income Tax
under Article 22 of the Tax Law and New York
City Personal Income Tax under Chapter 46,
Title T of the Administrative Code of the City
of New York for the year 1980.

Petitioner, Clinton C. Mathison, 193 East 91st Street, Brooklyn, New York 11212, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1980 (File No. 44983).

A hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on February 25, 1986 at 1:15 P.M., with all briefs to be submitted by April 15, 1986. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq. of counsel).

ISSUES

Whether the Audit Division properly attributed additional personal income to petitioner based on a sales tax audit of a partnership of which petitioner was a partner.

FINDINGS OF FACT

1. Clinton C. Mathison (hereinafter "petitioner") filed a joint New York State Income Tax Resident Return (with City of New York Personal Income Tax)

income reported were Mrs. Mathison's wages of \$30,984.00 and a rental loss of \$4,532.00.

2. On October 21, 1982, the Audit Division issued a Statement of Personal Income Tax Audit Changes wherein the following adjustments were made for taxable year 1980:

"Distributive share of additional income as per sales tax audit	\$36,254.00
Distributive share of income per partnership return IT-204 - not reported on return IT-201	<u>8.164 .00</u>
net adjustment	\$44,418.00"

3. Based on the aforesaid statement, the Audit Division issued a Notice of Deficiency against petitioner on February 9, 1983 asserting additional New York State and City personal income tax for 1980 of \$7,245.00, penalty of \$362.00, plus interest of \$1,664.71, for a total due of \$9,271.71. Said penalty was asserted for negligence pursuant to section 685(b) of the Tax Law and section T46-185.0(b) of the Administrative Code of the City of New York.

4. During the year at issue, petitioner and another individual were equal partners in C & C Super Service, a retail gasoline station located at 259 Empire Boulevard, Brooklyn, New York 11225.

5. Petitioner failed to report his 1980 distributive share of partnership income from C & C Super Service. Such distributive share was \$8,164.00.

6. The Sales Tax Bureau conducted a markup audit of C & C Super Service for the periods September 1, 1977 through May 31, 1981. Said audit produced a total tax deficiency of \$25,655.00.

7. Subsequently, an income tax audit was performed on petitioner's 1980 return. Since petitioner failed to provide the auditor with his books and

income tax deficiency. The aforestated adjustment of \$36,254.00 was computed, according to the audit workpapers, as follows:

<u>1980</u>	<u>GROSS RECEIPTS PER RETURN</u>	<u>ADDITIONAL GROSS RECEIPTS PER AUDIT</u>	<u>TOTAL GROSS SALES PER AUDIT</u>
January-February	\$ 69,374.00	\$ 16,146.00	\$ 85,520.00
March-May	129,848.00	30,223.00	160,071.00
June-August	125,095.00	29,117.00	154,212.00
September-November	102,086.00	23,117.00	125,203.00
December	46,600.00	10,847.00	57,447.00
	<u>\$473,003.00</u>	<u>\$109,450.00</u>	<u>\$582,453.00</u>
Less: Gross Sales Reported on IT-204			<u>(\$506,697.00)</u> ¹
Additional Gross Sales			\$ 75,766.00
Less: Additional Purchases Per Audit			<u>(\$ 2,160.00)</u>
Balance			\$ 73,606.00
Less: Purchases Added into Audit Twice			<u>(\$ 1,098.00)</u>
Total Additional Income			<u>\$ 72,508.00</u>
One-half Attributed to Petitioner			<u>\$ 36,254.00</u>

8. Petitioner appeared for the hearing (which was designated as "final") completely unprepared. He submitted a letter from one Herbert L. Silverstein, which stated:

"I am the accountant for Clinton & Dorothy Mathison. We request that you give Mr. & Mrs. Mathison a break up of how the assessment came about in 1980, and from what type of income. If we see that this is correct the Mathisons' will pay in full. They do not have any back up of the assessment."

9. Petitioner was provided with copies of all pertinent sales and income tax workpapers and documents. Although sufficient time was granted within which to submit documentation or a brief detailing petitioner's position in this matter, no such information was forthcoming.

¹ Additional gross sales computes to \$75,756.00 rather than \$75,766.00. However, the effect of said error is too negligible to ...

CONCLUSIONS OF LAW

A. That where there is some factual basis for deciding that the tax return as filed does not accurately reflect the true income received by a taxpayer, the Audit Division may determine proper income using indirect methods (see Holland v. United States, 348 U.S. 121, 131-132). The sales tax audit conducted by the Audit Division revealed \$25,655.00 in sales tax due. Such determination provided a factual basis for deciding that petitioner's return was not accurate and, thus, the Audit Division properly used the sales tax audit findings in its calculation of income tax. Nowhere in the Tax Law or regulations is the Audit Division precluded from utilizing the results of an audit conducted under one article of the Tax Law in an audit conducted under another article of the Tax Law.

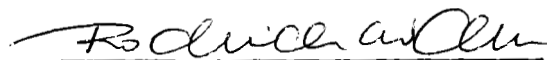
B. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that the deficiency at issue herein is erroneous or improper.

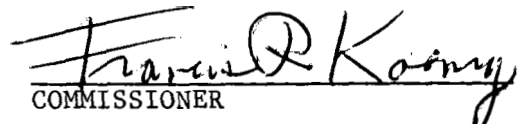
C. That the petition of Clinton C. Mathison is denied and the Notice of Deficiency issued February 9, 1983 is sustained together with such additional interest and penalty as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 30 1986


PRESIDENT


COMMISSIONER


COMMISSIONER