

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALPHONSE (Deceased) and

ANNA MAGNOTTI

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article ~~(\*)~~ 22 of the  
Tax Law for the Year(s) 1962, 1963 &  
1964.

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

State of New York  
County of Albany

MARY GROFF, 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 23rd day of December, 1975, she served the within  
Notice of Decision (~~on Redetermination~~) by (certified) mail upon Anna Magnotti and  
Alphonse Magnotti (~~representative of~~) the petitioner in the within  
(Deceased)  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mrs. Anna Magnotti  
& Alphonse Magnotti (Deceased)  
217 Broadway  
New York, New York 10007

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

23rd day of December, 1975.

Janet Mock

Mary Groff

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALPHONSE (Deceased) and

ANNA MAGNOTTI

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) 1962, 1963 &  
1964.

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

State of New York  
County of Albany

MARY GROFF

, 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 23rd day of December, 1975, she served the within

Notice of Decision (~~on Redetermination~~) by (certified) mail upon SEYMOUR HEINBERG, CPA

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Seymour Heinberg, CPA  
Escoe & Heinberg  
217 Broadway  
New York, New York 10007

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

23rd day of December, 1975.

*Just Mack*

*Mary Groff*



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT  
MILTON KOERNER

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright  
Mr. Coburn  
Mr. Leisner

(518) 457-3222

**RECEIVED:** Albany, New York  
December 23, 1973

Mrs. Anna Magnetti  
& Alphonse Magnetti (Decedent)  
217 Broadway  
New York, New York 10007

**Dear Mrs. Magnetti:**

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

Please take further notice that pursuant to  
Section (a) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
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,

**Paul R. Coburn**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ALPHONSE MAGNOTTI (Deceased) and	:	DECISION
ANNA MAGNOTTI	:	
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1962, 1963 and 1964.	:	

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Petitioners, Alphonse (deceased) and Anna Magnotti, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1962, 1963 and 1964. (File No. 9-49980352). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on March 20, 1973, at 1:15 P.M. Escor & Heinberg, by Seymour Heinberg, C.P.A. appeared for petitioners. Saul Heckelman, Esq., (James A. Scott, Esq., of counsel), appeared for the Income Tax Bureau.

ISSUE

Were adjustments, as a result of a field examination, of petitioners, Alphonse Magnotti (deceased) and Anna Magnotti's 1962, 1963 and 1964 personal income tax liability properly made?

FINDINGS OF FACT

1. Petitioners, Alphonse Magnotti and Anna Magnotti, filed New York State income tax resident returns for the years 1962 and 1963. They did not file a New York State income tax return for the year 1964.

2. Petitioner, Alphonse Magnotti, died on April 7, 1964.

3. On September 28, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Alphonse Magnotti (deceased) and Anna Magnotti, imposing additional personal income tax in the sum of \$86.80 for the year 1962, \$1,103.25 for the year 1963 and \$1,515.00 for the year 1964, as the result of a field audit. In accordance with the aforesaid Statement of a Notice of Deficiency was issued against petitioners in the sum of \$3,666.56.

4. The adjustments which were made in the aforesaid Statement of Audit Changes were:

1962

Unsubstantiated Medical expenses	\$1,229.95
Cash living expenses	2,500.00
Interest income	412.84
TOTAL	<u>\$4,142.79</u>

1963

Unsubstantiated medical expenses	\$ 5,233.34
Cash living expenses	2,500.00
Basis of partnership interest adjusted	6,500.00
Depending exemption disallowed	600.00
Interest income	449.89
(Less allowed deductions)	<u>- 387.14</u>
TOTAL	\$14,896.09

1964

Cash in vault held to be taxable income	\$15,500.00
Cash living expenses	3,500.00
Unexplained bank deposits	5,000.00
(Less allowed personal exemptions)	<u>- 2,200.00</u>
TOTAL	\$21,800.00

5. Petitioners did not contest the adjustments for interest income in 1962 and 1963.

6. Petitioner, Alphonse Magnotti, was hospitalized due to illness for significant parts of the years in question. He offered into evidence paid bills from hospitals to substantiate his claims for medical deductions in 1962 and 1963.

7. Petitioner, Alphonse Magnotti, was a partner in the ownership of a restaurant. He did not offer any documentary or other evidence to substantiate his claimed basis in the aforesaid partnership for the year 1963.

8. Petitioners had a son, Alan, for whom they provided more than one-half of his support in the year 1963, and therefore, the dependency exemption claimed for the aforesaid son was proper.

9. Petitioners received checks in payment for Alphonse Magnotti's partnership interest in a restaurant. These checks were demonstrated to be the sources of petitioners' bank deposits and cash in the vault and, therefore, said deposits and cash were not additional income attributable to petitioners for the year 1964.

10. Petitioner, Alphonse Magnotti, ate most of his meals at his restaurant. Also, for much of the period in issue, he was hospitalized. He and his family could have lived reasonably on the income stated on their returns. Therefore, adjustments made by the Income Tax Bureau for cash-living expenses were not necessary to substantiate petitioners' life style.

CONCLUSIONS OF LAW

A. That petitioners, Alphonse Magnotti (deceased) and Anna Magnotti, substantiated medical expenses claimed as deductions for the years 1962 and 1963.

B. That petitioners, Alphonse Magnotti (deceased) and Anna Magnotti, failed to substantiate the basis in the partnership of a business as claimed on their tax returns for the year 1963.

C. That petitioners, Alphonse Magnotti (deceased) and Anna Magnotti, properly claimed a dependency exemption for their son, Alan, in the year 1963.

D. That petitioners, Alphonse Magnotti (deceased) and Anna Magnotti, demonstrated the source of cash in a vault and bank deposits so as to make said amount not taxable as income in the years 1963 and 1964.

E. That the Income Tax Bureau was not reasonable in increasing petitioners, Alphonse Magnotti (deceased) and Anna Magnotti's income by the sums of cash living expenses and, therefore, said adjustments are accordingly cancelled.

F. That the petition of Alphonse Magnotti (deceased) and Anna Magnotti, is granted to the extent of cancelling adjustments for disallowed medical expenses, cash living expenses, unexplained bank deposits and cash in vault, and a dependency exemption. The petition is in all other respects denied and the Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued September 28, 1970, in accordance with this decision.

DATED: Albany, New York  
December 23, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT  
MILTON KOERNER

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright  
Mr. Coburn  
Mr. Leisher

DATED: Albany, New York  
December 23, 1975

(518) 457-3836  
3850

Mrs. Anna Magnotti  
& Alphonse Magnotti (Deceased)  
217 Broadway  
New York, New York 10007

Dear Mrs. Magnotti:

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

Please take further notice that pursuant to  
Section (x) 690 of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within 4 months  
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,

Paul B. Coburn  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

**STATE OF NEW YORK**

**STATE TAX COMMISSION**

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**In the Matter of the Petition**

**of**

**ALPHONSE MAGNOTTI (Deceased) and  
ANNA MAGNOTTI**

**DECISION**

**for Redetermination of Deficiency or  
for Refund of Personal Income Tax  
under Article 22 of the Tax Law for  
the Years 1962, 1963 and 1964.**

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**ISSUE**

Were adjustments, as a result of a field examination, of petitioners, Alphonse Magnotti (deceased) and Anna Magnotti's 1962, 1963 and 1964 personal income tax liability properly made?

AD 32 (8-74) 50M

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227

**CERTIFIED**

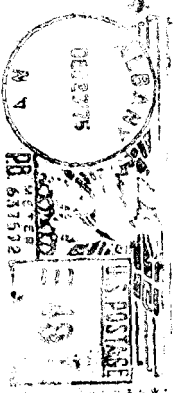
No. 403026

**MAIL**

Mrs. Anna Magnotti  
& Alphonse Magnotti (Deceased)  
217 Broadway  
New York, New York 10007

*Mrs. Leburn*

NEW YORK, NY 10007



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2. Petitioner, Alphonse Magnotti, died on April 7, 1964.
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B. That petitioners, Alphense Magnotti (deceased) and Anna Magnotti, failed to substantiate the basis in the partnership of a business as claimed on their tax returns for the year 1962.

C. That petitioners, Alphense Magnotti (deceased) and Anna Magnotti, properly claimed a dependency exemption for their son, Alan, in the year 1963.

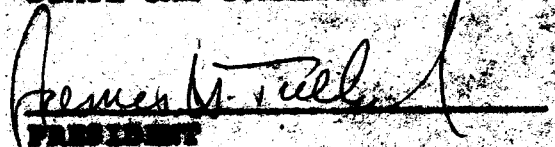
D. That petitioners, Alphense Magnotti (deceased) and Anna Magnotti, demonstrated the source of cash in a vault and bank deposits so as to make said amount not taxable as income in the years 1963 and 1964.

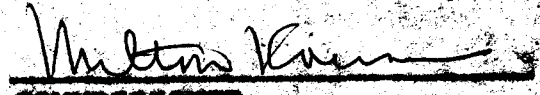
E. That the Income Tax Bureau was not reasonable in increasing petitioners, Alphonse Magnetti (deceased) and Anna Magnetti's income by the sums of cash living expenses and, therefore, said adjustments are accordingly cancelled.

F. That the petition of Alphonse Magnetti (deceased) and Anna Magnetti, is granted to the extent of cancelling adjustments for disallowed medical expenses, cash living expenses, unexplained bank deposits and cash in vault, and a dependency exemption. The petition is in all other respects denied and the Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued September 28, 1970, in accordance with this decision.

DATED: Albany, New York  
December 23, 1975

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COMMISSIONER