

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

October 9, 1979

Herbert Kalish
764 Tuckahoe Rd.
Yonkers, NY 10710

Dear Mr. Kalish:

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

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative
Abraham Steinberg
1948 Tenbroeck Ave.
Bronx, NY 10461
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Herbert Kalish :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income & UBT :
under Article 22 & 23 of the Tax Law
for the Year 1972. :

State of New York
County of Albany

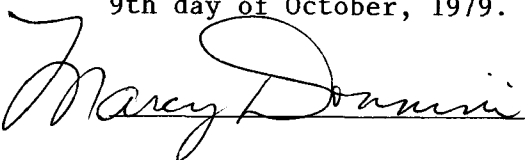
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Herbert Kalish, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

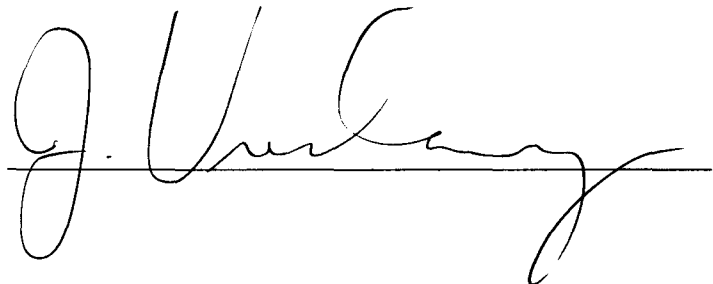
Herbert Kalish
764 Tuckahoe Rd.
Yonkers, NY 10710

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
9th day of October, 1979.


Nancy Donnan


J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Herbert Kalish :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

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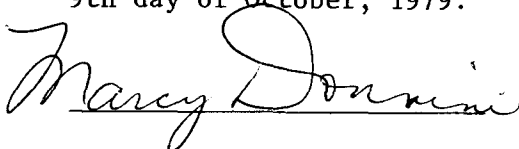
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Abraham Steinberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

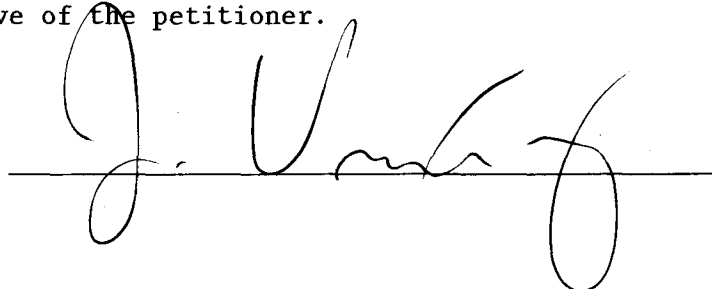
Mr. Abraham Steinberg
1948 Tenbroeck Ave.
Bronx, NY 10461

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 representative of the 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
9th day of October, 1979.


Nancy Donrini



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

HERBERT KALISH : DECISION

for Redetermination of a Deficiency or :
for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Year 1972. :

:

Petitioner, Herbert Kalish, 764 Tuckahoe Road, Yonkers, New York 10710, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1972 (File No. 12148).

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 October 30, 1978 at 10:45 A.M. Petitioner appeared by Abraham Steinberg. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the Income Tax Bureau properly determined petitioner's tax liability as a result of a field audit.

FINDINGS OF FACT

1. Petitioner, Herbert Kalish, timely filed a New York State Income Tax Resident Return (Form IT-201) and a New York State Unincorporated Business Tax Return (Form IT-202) for 1972.

2. Petitioner was a self-employed cleaner and tailor who did business under the name and style of "Maison Ciline", 70 West 86th Street, New York, New York.

3. On June 30, 1975 based on a field audit, the Income Tax Bureau issued a Notice of Deficiency against petitioner, on which additional personal income and unincorporated business taxes were asserted for 1972, based on the following adjustments which increased taxable income:

Additional income revealed per audit		\$6,096.89
Business expenses disallowed:		
Auto Expenses	\$229.50	
Auto Insurance	577.00	
Safety Deposit Boxes (Rental)	<u>32.56</u>	839.06
Total Adjustment		<u>\$6,935.95</u>

4. The Income Tax Bureau examined petitioner's books and records in accordance with established audit procedures and techniques. It utilized the source and application of funds method of reconstructing income, along with an analysis of petitioner's living expenses. The bureau determined that the cash available for his personal living expenses was deficient by \$6,096.89. The individual elements used in said method were based on petitioner's books and records, and were not disputed by him. Petitioner did contend that his living expenses were less than that shown on the cost of living analysis, due to a special diet maintained by him. Petitioner submitted a variety of coupons, receipts and government publications which were undated, and which pertained to years other than the tax year at issue, or which were made out to petitioner's representative.

5. Petitioner also contended that in the course of conducting his business, an automobile was used for deliveries during 1972; as a result, he incurred \$229.50 in parking violations, and paid \$577.00

for automobile insurance. In addition, petitioner contended that he neglected to deduct other automobile expenses, such as depreciation and gasoline, but did not submit any bills, receipts, or other documentary evidence to substantiate said expenditures.

CONCLUSIONS OF LAW

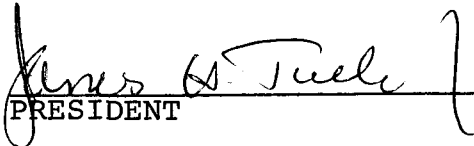
A. That petitioner, Herbert Kalish, failed to sustain the burden of proof which is imposed by section 689(e) of the Tax Law, and which requires him to establish that the Notice of Deficiency issued on June 30, 1975 was erroneous, arbitrary, or capricious.


B. That the petition of Herbert Kalish is denied and the Notice of Deficiency issued on June 30, 1975 is sustained, together with such additional interest as may be lawfully owing.

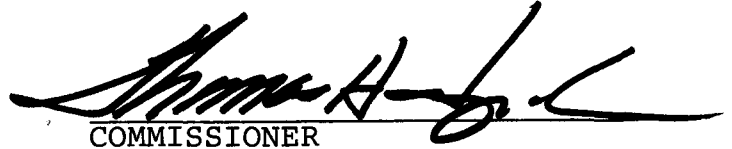
DATED: Albany, New York

STATE TAX COMMISSION

OCT 9 1979


PRESIDENT


COMMISSIONER


COMMISSIONER