

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Alexandros & Vasiliki Alexandrou :  
for Redetermination of a Deficiency or for Refund :  
of Personal Income Taxes under Article 22 of the :  
Tax Law and Chapter 46, Title T of the :  
Administrative Code of the City of New York for :  
the Years 1977 & 1978. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

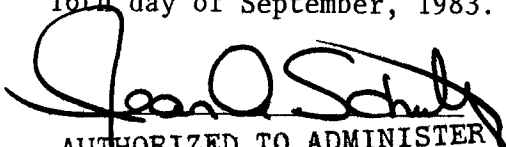
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of September, 1983, she served the within notice of Decision by certified mail upon Alexandros & Vasiliki Alexandrou, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alexandros & Vasiliki Alexandrou  
82 Boundary Avenue  
Staten Island, NY 10306

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  
16th day of September, 1983.

  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

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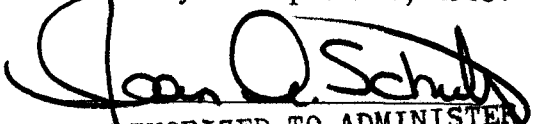
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of September, 1983, she served the within notice of Decision by certified mail upon Chris Pysos the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Chris Pysos  
35-10 Broadway Rm. 205  
Astoria, NY 11106

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  
16th day of September, 1983.

  
\_\_\_\_\_  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW

  
\_\_\_\_\_  
Connie B. Hagelund

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

September 16, 1983

Alexandros & Vasiliki Alexandrou  
82 Boundary Avenue  
Staten Island, NY 10306

Dear Mr. & Mrs. Alexandrou:

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 Law 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  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Chris Pyrsos  
35-10 Broadway Rm. 205  
Astoria, NY 11106  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ALEXANDROS ALEXANDROU AND VASILIKI ALEXANDROU : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Taxes under Article :  
22 of the Tax Law and Chapter 46, Title T of the :  
Administrative Code of the City of New York for :  
the Years 1977 and 1978. :  

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Petitioners, Alexandros Alexandrou and Vasiliki Alexandrou, 82 Boundary Avenue, Staten Island, New York 10306, 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 years 1977 and 1978 (File No. 32964).

A small claims 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 December 6, 1982 at 2:45 P.M. Petitioner Alexandros Alexandrou appeared with Chris Pyrsos. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUES

I. Whether certain field audit adjustments attributing additional business income to petitioner Alexandros Alexandrou for the years 1977 and 1978 were proper.

II. Whether negligence penalties imposed pursuant to section 685(b) of the Tax Law were proper.

FINDINGS OF FACT

1. Petitioners, Alexandros Alexandrou and Vasiliki Alexandrou, filed combined New York State income tax resident returns (with New York City personal income tax) for the years 1977 and 1978 whereon Alexandros Alexandrou (hereinafter petitioner) reported business income for each of said years from his activities as an independent medallioned taxi cab owner and operator. Business income reported for 1977 and 1978 was \$5,915.00 and \$5,527.00 respectively.

2. On August 18, 1980 the Audit Division issued a Statement of Personal Income Tax Audit Changes to petitioners wherein the following adjustments were made:

	<u>HUSBAND</u> <u>1977</u>	<u>WIFE</u> <u>1977</u>	<u>HUSBAND</u> <u>1978</u>	<u>WIFE</u> <u>1978</u>
"Additional Business Income	\$ 3,301.00		\$4,800.00	
Re-computed Interest Income	\$ 1,361.81	\$(1,414.97)	\$1,484.81	\$(1,479.92)
The Standard Deduction Has Been Adjusted To The Maximum Allowable	<u>\$(1,000.00)</u>	<u>\$ 685.58</u>	<u>\$ (873.00)</u>	<u>\$ 373.00</u>
Net Adjustment	<u>\$ 3,662.81</u>	<u>\$(729.39)</u>	<u>\$5,411.81</u>	<u>\$(1,106.92)"</u>

Accordingly, a Notice of Deficiency was issued against petitioner on November 7, 1980. However; since this notice erroneously listed only 1977, a corrected Notice of Deficiency, whereon both 1977 and 1978 were listed, was issued against petitioner on March 20, 1981 asserting additional New York State and City personal income taxes of \$566.47, plus penalty and interest of \$144.46, for a total due of \$710.93. Said penalty was asserted pursuant to section 685(b) of the Tax Law for negligence.

3. The only adjustments contested by petitioner were those crediting him with additional business income for 1977 and 1978.

4. During the years at issue petitioner owned and operated a 1973 medallioned Checker taxi cab. He operated predominantly in Manhattan on a five day per week basis. Each work day was limited to approximately eight hours due to a

back problem petitioner experienced during the years at issue. He contended that since he did not own a personal automobile, he additionally used his taxi cab for personal purposes.

5. Petitioner maintained no record of cash receipts. Expenses were paid by cash or money order.

6. Petitioner's gross receipts and gasoline expenses, as reported on his Federal schedules C, were estimated.

7. Petitioner claimed he worked forty-six (46) weeks during each year at issue based on his taking a four week vacation each year and a two week "down time" period each year for the taxi cab.

8. The Audit Division initially computed petitioner's estimated gross receipts as follows:

	<u>1977</u>	<u>1978</u>
"Gasoline Expense (as per Schedule C)	\$ 1,900.00	\$ 2,000.00
(Cost of Gallon of Gas) Divided by 1977 - 65¢	.65	
Divided by 1978 - 75¢		.75
Gallons of Gas used	<u>2,923</u>	<u>2,667</u>
At 10 miles per gallon	X 10	X 10
Business Miles Driven	<u>29,230</u>	<u>26,670</u>
At \$1.00 per mile	X \$1.00	X \$1.00
Estimated Gross Receipts	<u>\$29,230.00</u>	<u>\$26,670.00"</u>
(per Audit Guidelines)		

9. Subsequently, petitioner's estimated gross receipts were recomputed to the amounts yielding the adjustments at issue herein, as follows:

	<u>1977</u>	<u>1978</u>
"Total Miles Driven as per Taxpayer's Annual Report of Operations	22,185	24,252
Less: Mileage from Staten Island home to Manhattan and back (25 miles round trip X 5 days = 125 miles X 46 working weeks)	<u>5,750</u>	<u>5,750</u>
Business Miles Driven	<u>16,435</u>	<u>18,502</u>
At \$1.00 per mile	X \$1.00	X \$1.00
Estimated Gross Receipts Per Audit	<u>\$16,435.00</u>	<u>\$18,502.00</u>
Gross Receipts Per Return	<u>\$13,134.00</u>	<u>\$13,702.00</u>
Additional Gross Receipts	<u>\$ 3,301.00</u>	<u>\$ 4,800.00"</u>

The \$1.00 per mile used in the above computation took into consideration amounts received as tips.

10. Pursuant to the Audit Division's "Taxicab Audit Guidelines", the fares during 1977 and 1978 were 75¢ for the first 1/7 mile (trip fee) and 10¢ each additional 1/7 mile (unit fee). An additional 15¢ fuel surcharge for each trip was authorized in 1978. Petitioner argued that the fares during 1977 and 1978 were 65¢ for the first 1/5 mile and 10¢ each additional 1/5 mile.

11. Although raised as an issue, the negligence penalty was not addressed by petitioner during the hearing held herein.

#### CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York is, by its own terms, tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to corresponding sections of Chapter 46, Title T of the Administrative Code of the City of New York.

B. That petitioner has failed to sustain his burden of proof, required pursuant to section 689(e) of the Tax Law, to show that the adjustments attributing additional business income to him for the years at issue herein were improper or erroneous. Accordingly, such adjustments are hereby sustained.


C. That the penalties asserted pursuant to section 685(b) of the Tax Law are hereby sustained.

D. That the petition of Alexandros Alexandrou and Vasiliki Alexandrou is denied and the Notice of Deficiency issued March 20, 1981 is hereby sustained together with such additional penalty and interest as may be lawfully owing.


DATED: Albany, New York

SEP 16 1983

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER