

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Henry Glasser : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Years :  
1971 - 1974.

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State of New York  
County of Albany

David Parchuck, 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 1st day of April, 1983, he served the within notice of Decision by certified mail upon Henry Glasser, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry Glasser  
c/o Eugene O. Cobert  
60 E. 42nd St., Suite 1765  
New York, NY 10017

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  
1st day of April, 1983.

David Parchuck

Annie A. Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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State of New York  
County of Albany

David Parchuck, 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 1st day of April, 1983, he served the within notice of Decision by certified mail upon Eugene O. Cobert the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eugene O. Cobert  
60 E. 42nd St., Suite 1765  
New York, NY 10017

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  
1st day of April, 1983.

David Parchuck

Annunzio A. Haggard

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

April 1, 1983

Henry Glasser  
c/o Eugene O. Cobert  
60 E. 42nd St., Suite 1765  
New York, NY 10017

Dear Mr. Glasser:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Eugene O. Cobert  
60 E. 42nd St., Suite 1765  
New York, NY 10017  
Taxing Bureau's Representative

## STATE TAX COMMISSION

## DECISION

A formal hearing was commenced before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 20, 1979 at 9:15 A.M., and was continued before the same Hearing Officer at the same offices on January 10, 1980 at 9:35 A.M. The hearing was continued to conclusion before Dennis M. Galliher, Hearing Officer, at the same offices on May 19, 1982 at 2:45 P.M. Petitioner appeared at all times by Eugene O. Cobert, Esq. The Audit Division appeared at the commencement of the hearing, and at the January 10, 1980 continuation, by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel), and at the May 19, 1982 continuation to conclusion by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

Whether penalties asserted against petitioner for willful neglect in failing to file income tax returns and pay tax due for the years 1971 through 1974 may be waived.

FINDINGS OF FACT

1. On March 28, 1977, the Audit Division issued to petitioner, Henry Glasser, a Notice of Deficiency asserting additional tax due for the years 1971 through 1974 as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
1971	5395.72	2562.83	1603.23	9561.78
1972	8321.64	3869.56	2465.70	14656.90
1973	6400.40	2592.16	1457.18	10449.74
1974	5803.15	2002.09	962.22	8767.46
<u>Total:</u>	<u>25920.91</u>	<u>11026.64</u>	<u>6488.33</u>	<u>43435.88</u>

2. A Statement of Audit Changes, dated February 15, 1977, explained the above asserted deficiency reflected the Audit Division's computation of petitioner's tax liability for the years 1971 through 1974 based on known and estimated income. This computation by the Audit Division was made after petitioner failed to respond to two letters from the Audit Division, dated February 26, 1975 and October 21, 1976, respectively, which had requested petitioner to substantiate the filing of New York State income tax returns for the years 1971 through 1974.

3. During the hearing commenced on July 20, 1979, petitioner's representative and the Audit Division reached an agreement, whereby the above asserted deficiency would be recomputed by the Audit Division on the basis of petitioner's Federal income tax returns for the years at issue, as well as other documents to be submitted by petitioner in substantiation of certain deductions claimed by petitioner.

4. Pursuant to the above agreement, the asserted deficiency was recomputed by the Audit Division. This recomputation resulted in a reduction of the asserted deficiency as follows:

<u>Year</u>	<u>Recomputed Tax</u>
1971	\$ 3948.97*
1972	6475.45
1973	3874.10
1974	2920.30
<u>Total</u>	<u>\$17218.82</u> [plus penalty and interest]

5. At the May 19, 1982 continuation of the hearing, petitioner's representative agreed the amount of tax asserted as due according to the recomputation was proper and would be paid by petitioner. However, he protested the penalties asserted against petitioner pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to file returns and pay tax due, and sought waiver of such penalties based on reasonable cause. No evidence was submitted either at or subsequent to the hearing concerning establishment of reasonable cause, on petitioner's part, for failure to file returns and pay tax.

CONCLUSIONS OF LAW

A. That petitioner has not provided any evidence to establish the existence of reasonable cause for his failure to file tax returns and pay tax due during the years at issue. Accordingly, there is no basis upon which to allow waiver of such penalties.

B. That the petition of Henry Glasser is hereby denied and the Notice of Deficiency, as recomputed and shown in Finding of Fact "4", together with such interest and penalties as may be lawfully owing, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

APR 01 1983

Roderick W. Chan  
PRESIDENT

Francis R. Koehn  
COMMISSIONER

[Signature]  
COMMISSIONER

\* The recomputation showed tax due for 1971 in the amount of \$3961.47. However, the Audit Division acknowledged an error in the amount of statutory credit which was allowed in recomputing the tax for 1971. Accordingly, this error, totalling \$12.50, reduces the original recomputed amount (\$3,961.47) to \$3,948.97.