

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph Maglio : 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 and :
Chapter 46 Title T of the Administrative Code of :
the City of New York for the Years 1977 & 1978. :

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 29th day of June, 1983, she served the within notice of Decision by certified mail upon Joseph Maglio, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Maglio
2179 Bogart 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
29th day of June, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

Joseph Maglio :

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 and :
Chapter 46, Title T of the Administrative Code of :
the City of New York for the Years 1977 and 1978. :

State of New York
County of Albany

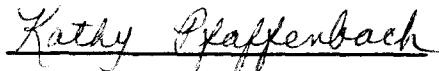
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of June, 1983, she served the within notice of Decision by certified mail upon Joseph F. Gilleece the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph F. Gilleece
16 Donna Drive (Unit 33)
Norwalk, CT 06854

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
29th day of June, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

June 29, 1983

Joseph Maglio
2179 Bogart Ave.
Bronx, NY 10461

Dear Mr. Maglio:

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
Joseph F. Gilleece
16 Donna Drive (Unit 33)
Norwalk, CT 06854
Taxing Bureau's Representative

STATE TAX COMMISSION

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1982 at 9:15 A.M., with all briefs to be submitted by December 1, 1982. Petitioner appeared by Joseph F. Gilleece. The Audit Division appeared by Paul B. Coburn, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined the income generated from petitioner's taxicab business using the gasoline purchase markup method.

FINDINGS OF FACT

1. Petitioner herein, Joseph Maglio, timely filed New York State and New York City income tax resident returns for the years 1977 and 1978 wherein he reported business income of \$7,603.00 and \$8,673.00, respectively. The business

income reported on the 1977 and 1978 returns represented the income generated from petitioner's operation of a taxicab in the metropolitan New York City area. No unincorporated business tax returns were filed for the years at issue.

2. On January 6, 1981 the Audit Division issued a Notice of Deficiency to petitioner for the years 1977 and 1978, asserting additional New York State and New York City personal income tax of \$3,239.02, plus penalty¹ and interest of \$786.95, for a total due of \$4,025.97. A second Notice of Deficiency, also dated January 6, 1981, was issued to petitioner for the years 1977 and 1978, this one asserting unincorporated business tax of \$1,310.86, plus penalty² and interest of \$316.55, for a total due of \$1,627.41. Both of the aforementioned notices of deficiency were premised on the results of a field audit conducted by the Audit Division, wherein it was alleged that petitioner had understated the income generated from his taxicab business by \$8,964.00 for 1977 and \$18,945.00 for 1978.

3. The Audit Division used a gasoline purchase markup to determine the amounts of understated income enumerated in Finding of Fact "2", supra. The gasoline purchase markup was computed by the Audit Division in the following manner:

¹ Penalties were asserted pursuant to Tax Law section 685(b) for negligence and Tax Law section 685(c) for underestimation of estimated tax.

² Penalty was asserted pursuant to Tax Law section 685(b) for negligence.

	<u>1977</u>	<u>1978</u>
Total gasoline purchases as per Federal Schedule C	\$ 1,904.00 ³	\$ 3,750.00 ³
Divided by price per gallon	<u>.65³</u>	<u>.75³</u>
Gallons of gasoline purchased	2,929.23 ³	5,000.00 ³
Multiplied by miles per gallon	<u>10³</u>	<u>10³</u>
Total miles driven	29,292.00	50,000.00
Less: 20% for unladen cruising miles	<u>5,858.00³</u>	<u>10,000.00³</u>
Total laden miles	23,434.00	40,000.00
Multiplied by \$1.00 received for each laden mile	<u>1.00³</u>	<u>1.00³</u>
Gross receipts	\$23,434.00	\$40,000.00
Less: net income reported on Federal Schedule C	<u>14,470.00</u>	<u>21,055.00</u>
Unreported Income	<u>\$ 8,964.00</u>	<u>\$18,945.00</u>

4. Petitioner computed gross receipts generated from his operation of the taxicab, as reported on Federal Schedule C, from an analysis of his daily taximeter readings (more commonly known as "trip sheets"). Petitioner initially testified that the New York City Taxi and Limousine Commission required the trip sheets to be kept for a six month period and that after the expiration of said period the trip sheets were destroyed. Petitioner later testified that the trip sheets were kept for the entire year and were not destroyed until after the tax return for the year was prepared. The trip sheets for 1977 and 1978 were not submitted by petitioner to the Audit Division for examination nor were said trip sheets offered into evidence at the hearing held herein. Other than the trip sheets, petitioner maintained no books or records (either formal or otherwise) which detailed the gross receipts generated from his taxicab business. Petitioner maintained no books or records which detailed the income he received from tips during the years at issue. Petitioner did, however,

³ The Audit Division did not arrive at these figures as the result of an examination of petitioner's books and records. These figures represent averages and estimates established from a prior test project.

maintain some records and substantiation with respect to the business expenses claimed on Federal Schedule C.

5. Petitioner's representative argued that the price per gallon for gasoline, as determined by the Audit Division, was lower than the average cost petitioner actually incurred. Petitioner testified at the hearing that he thought the prices were higher but that he was not sure. No documentary evidence was adduced at the hearing in support of petitioner's actual per gallon cost for gasoline during the years 1977 and 1978.

6. Petitioner also argued that the 20 percent allowance for unladen cruising miles did not give adequate consideration to the 25 unladen roundtrip miles driven per day from his home in Bronx, New York to his work locale in lower Manhattan. No documentary evidence was offered to support the total miles driven during the years at issue or the total number of laden miles.

7. The 10 miles per gallon as determined by the Audit Division represents an estimate for a six cylinder vehicle. During the years at issue petitioner's taxicab was an eight cylinder vehicle which averaged 8 miles per gallon.

8. Petitioner filed his 1978 New York State and New York City income tax return as a single individual. On said return petitioner claimed the minimum standard deduction for a single individual of \$1,400.00 [Tax Law section 614(c)(1)]. The Audit Division recomputed petitioner's taxable income for the year 1978 by adding the unreported income disclosed pursuant to the gasoline purchase markup test to taxable income reported on the return. No adjustment was made by the Audit Division to increase the standard deduction to the maximum allowable for 1978 due to the increase in total New York income.

9. Petitioner did not argue nor was any evidence presented with respect to the penalties asserted due pursuant to sections 685(b) and 685(c) of the Tax Law.

CONCLUSIONS OF LAW

A. That pursuant to Finding of Fact "7", supra, petitioner has established that his eight cylinder taxicab averaged eight miles per gallon and not ten miles per gallon as estimated by the Audit Division in its gasoline purchase markup.

B. That section 689(e) of the Tax Law places the burden of proof on petitioner except in three specifically enumerated instances, none of which pertain to the issues addressed in the instant matter. That petitioner maintained no clear, systematic and consistent record of the receipts and tips generated from his operation of a taxicab during the years 1977 and 1978. That petitioner has failed to sustain his burden of proof (except as otherwise provided for in Conclusion of Law "A", supra) to show that the gasoline purchase markup method utilized by the Audit Division did not accurately reflect the receipts and tips received from his taxicab business.

C. That for the year 1978 petitioner is entitled to the maximum standard deduction of \$2,400.00 due to the increase in total New York income and not the \$1,400.00 minimum standard deduction allowed by the Audit Division [Tax Law section 614(a)].

D. That petitioner has failed to sustain the burden of proof to show that the Audit Division improperly asserted penalties due pursuant to sections 685(b) and 685(c) of the Tax Law.

E. That the petition of Joseph Maglio is granted to the extent indicated in Conclusions of Law "A" and "C", supra; that the Audit Division is directed

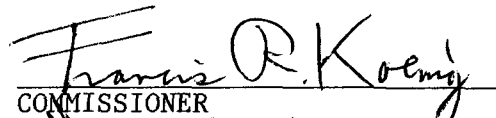
to recompute petitioner's liability for 1977 and 1978 consistent with the decision rendered herein; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

JUN 29 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

CAMPUS

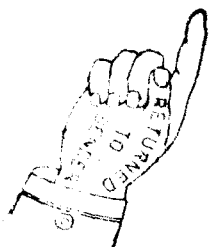
CLAIM CHECK NO. 1 I. Y. 12227

44-0080

☐ HOLD

DATE

1ST NOTICE



Joseph Maglio
2179 Bogart Ave.
Bronx, NY 10461

CERTIFIED

P 481 207 657

MAIL

Detached from
PS Form 3840
July 1977

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

June 29, 1983

Joseph Maglio
2179 Bogart Ave.
Bronx, NY 10461

Dear Mr. Maglio:

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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
Joseph F. Gilleece
16 Donna Drive (Unit 33)
Norwalk, CT 06854
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH MAGLIO	:	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 and Chapter 46, Title T of the	:	
Administrative Code of the City of New York for	:	
the years 1977 and 1978.	:	

Petitioner, Joseph Maglio, 2179 Bogart Avenue, Bronx, New York 10461, filed a petition for redetermination of a deficiency or for refund of personal and unincorporated business taxes under Article 22 and 23 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 (File No. 32125).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1982 at 9:15 A.M., with all briefs to be submitted by December 1, 1982. Petitioner appeared by Joseph F. Gilleece. The Audit Division appeared by Paul B. Coburn, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

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CONCLUSIONS OF LAW

A. That pursuant to Finding of Fact "7", supra, petitioner has established that his eight cylinder taxicab averaged eight miles per gallon and not ten miles per gallon as estimated by the Audit Division in its gasoline purchase markup.

B. That section 689(e) of the Tax Law places the burden of proof on petitioner except in three specifically enumerated instances, none of which pertain to the issues addressed in the instant matter. That petitioner maintained no clear, systematic and consistent record of the receipts and tips generated from his operation of a taxicab during the years 1977 and 1978. That petitioner has failed to sustain his burden of proof (except as otherwise provided for in Conclusion of Law "A", supra) to show that the gasoline purchase markup method utilized by the Audit Division did not accurately reflect the receipts and tips received from his taxicab business.

C. That for the year 1978 petitioner is entitled to the maximum standard deduction of \$2,400.00 due to the increase in total New York income and not the \$1,400.00 minimum standard deduction allowed by the Audit Division [Tax Law section 614(a)].

D. That petitioner has failed to sustain the burden of proof to show that the Audit Division improperly asserted penalties due pursuant to sections 685(b) and 685(c) of the Tax Law.

E. That the petition of Joseph Maglio is granted to the extent indicated in Conclusions of Law "A" and "C", supra; that the Audit Division is directed

to recompute petitioner's liability for 1977 and 1978 consistent with the decision rendered herein; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUN 29 1983

STATE TAX COMMISSION

Roderich G. Cline
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Judd
COMMISSIONER