

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
Estate of Charles A. Martuzas	:	
and Mary Ann Martuzas	:	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	:	
Years 1977 & 1978.	:	

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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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Estate of Charles A. Martuzas and Mary Ann Martuzas, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Charles A. Martuzas  
and Mary Ann Martuzas  
249 Ward Street  
Watertown, NY 13601

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  
6th day of May, 1983.

David Parchuck

Annice A. Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
Estate of Charles A. Martuzas	:	
and Mary Ann Martuzas	:	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	:	
Years 1977 & 1978.	:	

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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 6th day of May, 1983, he served the within notice of Decision by certified mail upon H. Thomas Swartz the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

H. Thomas Swartz  
Giles, Mahoney, Marsh, Swartz & Goodwin  
316 Sherman Street  
Watertown, NY 13601

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  
6th day of May, 1983.

David Parchuck

Gemma A. Hagelund

**AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174**

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

May 6, 1983

Estate of Charles A. Martuzas  
and Mary Ann Martuzas  
249 Ward Street  
Watertown, NY 13601

Dear Mrs. Martuzas:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
H. Thomas Swartz  
Giles, Mahoney, Marsh, Swartz & Goodwin  
316 Sherman Street  
Watertown, NY 13601  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ESTATE OF CHARLES A. MARTUZAS	:	
AND MARY ANN MARTUZAS	:	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 Years 1977 and 1978.	:	

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Petitioners, Estate of Charles A. Martuzas and Mary Ann Martuzas, 249 Ward Street, Watertown, New York 13601, 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 years 1977 and 1978 (File No. 32911).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Utica, New York, on March 16, 1982 at 10:45 A.M., with all briefs to be submitted by August 1, 1982. Petitioners appeared by H. Thomas Swartz, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

#### ISSUE

Whether petitioners are liable for additional income tax and unincorporated business tax for the years 1977 and 1978 pursuant to audit.

#### FINDINGS OF FACT

1. On December 8, 1980, the Audit Division issued a Notice and Demand for Payment of Personal and Unincorporated Business Taxes Under Jeopardy Assessment against Charles A. Martuzas for the years 1977 and 1978 in the amount of \$11,240.45 and a similar Notice and Demand against Charles A. Martuzas and Mary

Ann Martuzas for the year 1978 in the amount of \$3,509.13. For 1977 petitioners filed separate income tax returns and for 1978 they filed a joint income tax return. Attached to the notices were statements of audit changes which explained the computations for corrected tax due with additional interest. It was stated that additional sales had been found upon audit resulting in additional income, thus increasing personal and unincorporated business taxes. On January 26, 1981 a Notice of Deficiency in the amount of \$14,749.58 was issued against Charles A. Martuzas.

2. A sales tax audit for the period of January 1, 1979 through August 31, 1980 was made on the records of Martuzas Music, Inc. No tax was found to be due and exempt sales were found to be correct. Since the business had been incorporated in January, 1979, the auditor viewed the records of the corporation's predecessor, a sole proprietorship (Charles Martuzas d/b/a Martuzas Music). As a result of this review, the auditor found that the reported markup increased from 21.4 percent in 1978 to 34 percent in 1979.

3. The reported Schedule C (Form 1040) markup of 16.4 percent for 1977 and 21.4 percent for 1978 appeared to be low for a retail store. Further, the auditor found that sales were listed on Canadian customs forms for which no invoices or entries had been made in the vendor's sales journal. Based on the foregoing, a sales tax markup audit of Charles Martuzas d/b/a Martuzas Music was conducted by the Audit Division. Sales were placed in three major categories, i.e., records, musical instruments and stereo. Markup tests were conducted in each category. The markup percentage for stereo was found to be 27.4 percent and that for records was found to be 15.51 percent. These percentages were agreeable to Charles A. Martuzas. For musical instruments, a 32.2 percent markup was computed which percentage was objected to by Charles A. Martuzas.

He computed a new markup of 27 percent which was agreed to by the auditor. Based upon these markups, additional sales of \$3,763.21 per month were found for the months of June 1, 1977 through December 31, 1977 and \$1,368.08 per month for the year 1978.

4. On November 20, 1980, Charles A. Martuzas signed a Consent to Fixing of Tax Not Previously Determined and Assessed for sales and use tax for the periods ending August 31, 1977 through February 28, 1979 in the amount of \$3,664.52 plus interest of \$848.97 for a total of \$4,513.49.

5. On the basis of the computation of additional sales the Audit Division calculated additional personal income tax for the years 1977 and 1978:

	1977	1978
Additional sales	\$40,578.27	\$20,576.72
Taxable income previously stated	16,342.12	42,953.00
Corrected taxable income	56,920.39	63,529.72
Tax on corrected taxable income	6,798.05	7,789.45
Correct tax due	6,798.05	7,789.45
Tax previously computed	994.21	4,702.95
Total additional tax due	5,803.84	3,086.50
Interest	1,288.04	422.63
Total	<u>\$ 7,091.88</u>	<u>\$ 3,509.13</u>

6. On the basis of the computation of additional sales the Audit Division calculated additional unincorporated business tax for the years 1977 and 1978:

	1977	1978
Additional sales	\$40,578.27	\$20,576.72
Allowance for taxpayer services	(483.09)	
Net adjustment per audit	40,095.18	20,576.72
Taxable business income previously stated	13,067.63	44,227.00
Corrected business income	53,162.81	64,803.72
Tax (5½% for 1977 and 5% for 1978)	2,923.95	3,240.18
Unincorporated business tax previously computed	718.72	1,961.35
Total due	\$ 2,205.23	\$ 1,278.83
Interest	489.40	175.11
Total	<u>\$ 2,694.63</u>	<u>\$ 1,453.94</u>

7. Petitioners offered no substantial evidence to show that the auditor's computation was incorrect. Petitioners did submit Source and Application of

Funds Schedules for 1977 and 1978 showing no understatement of income for either year. However, no records were submitted showing the source of the figures in the schedules. No records were submitted to show that the information was all inclusive.

CONCLUSIONS OF LAW

A. That, although the jeopardy assessment for personal income tax for 1978 included the name of petitioner Mary Ann Martuzas, the Notice of Deficiency was issued to Charles A. Martuzas only. Accordingly, since no Notice of Deficiency was issued against Mary Ann Martuzas, as required by section 694(b) of the Tax Law, no issue exists as to her liability.

B. That petitioner Estate of Charles A. Martuzas has not submitted any substantial evidence to establish that the additional income determined by the Audit Division was erroneous. Accordingly, petitioner Estate of Charles A. Martuzas has failed to sustain the burden of proof as required by sections 689(e) and 722 of the Tax Law and the audit adjustments are considered correct.

C. That the petition of the Estate of Charles A. Martuzas is denied and the Notice of Deficiency issued on January 26, 1981 is sustained.

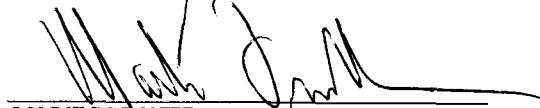
DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER