

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of James J. Milo	: : : : : : :	: : : : : : :
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 Year 1974.		

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 27th day of May, 1983, he served the within notice of Decision by certified mail upon James J. Milo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James J. Milo
479 Medina St.
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
27th day of May, 1983.

David Parchuck

James J. Milo

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

James J. Milo
479 Medina St.
Staten Island, NY 10306

Dear Mr. Milo:

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 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES J. MILO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioner, James J. Milo, 468 Medina Street, Staten Island, New York 10306, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 18263).

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 October 23, 1980 at 2:45 P.M. and continued on May 4, 1981 at 10:45 A.M. and September 15, 1982 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. and Paul B. Coburn, Esq. (Frank Levitt, Angelo Scopellito and Paul Lefebvre, Esqs., of counsel).

ISSUES

- I. Whether an adjustment attributing unreported income to petitioner was proper.
- II. Whether such adjustment attributing unreported income to petitioner should be increased based on a purported error in computation.
- III. Whether certain adjustments made to business and non-business deductions claimed were proper.

FINDINGS OF FACT

1. James J. Milo (hereinafter petitioner) timely filed separately on a New York State Combined Income Tax Return with his wife for the year 1974 whereon he reported business income of \$3,412.00 derived from his part-time law practice.

2. On August 17, 1976 the Audit Division issued a Statement of Audit Changes to petitioner wherein, pursuant to schedules of audit adjustments attached thereto, the following adjustments were made:

"Unexplained deposits deemed to be unreported income \$1,568.56

Cash expenses from Schedule C disallowed as unsubstantiated:

Cost of labor	227.00
Material Supplies & Stationery	62.00
Periodicals	48.00
Postage	89.00
Taxis	141.00
Subway, buses	134.00
Entertainment	124.00
Office maintenance	117.00
Repairs	58.00
Office accessories	36.00
Use of car	275.00
Misc.	71.00

Business expenses disallowed for personal use:

Rent	679.00
Telephone	295.00

Itemized deductions disallowed as unsubstantiated:

Contributions	284.00
Sales taxes	50.00
Gasoline taxes	81.00

Additional cash required for ordinary living expenses:

Auto	540.00	
Food & out-of-pocket cash	<u>3,600.00</u>	<u>4,140.00</u>
Net Adjustment Per Audit		<u>\$8,479.56"</u>

Said adjustments were made as the result of a field audit.

Accordingly, a Notice of Deficiency was issued against petitioner on January 24, 1977 asserting additional personal income tax of \$818.03, plus interest of \$123.64, for a total of \$941.67.

3. Petitioner offered no evidence, documentary or otherwise, to establish that the adjustments made to his various business and non-business expense deductions were erroneous or improper.

4. Petitioner offered no evidence to establish that the adjustment made for "Additional cash required for ordinary living expenses" was erroneous or improper.

5. The adjustment for "Unexplained deposits deemed to be unreported income" of \$1,568.56 was computed pursuant to the source and application of funds method of income reconstruction as follows:

Source of Income;

Gross receipts from business	\$ 7,469.00	
Mortgage payments received	4,826.33	
Savings account interest reinvested	<u>2,563.62</u>	
Total Sources		\$14,858.95

Application of Income;

Net deposits into savings accounts	\$ 6,410.71	
Deposits into checking accounts	<u>10,016.80</u>	
Total Applications		<u>16,427.51</u>
Unexplained Deposits Deemed To Be Unreported Income		<u>\$ 1,568.56</u>

Net deposits into savings accounts of \$6,410.71 was computed by subtracting total withdrawals of \$149,660.70 from total deposits in savings accounts of \$156,071.41.

6. During the hearing held herein, the Audit Division asserted a greater deficiency than that asserted pursuant to the Notice of Deficiency. Its basis for such action was that:

"The auditor's workpapers include a source and application of funds schedule. An item of savings account interest reinvested of \$2,563.62 is listed as a source of funds. This item is duplicated within the item of net deposits into savings accounts. Thus, the unexplained deposits have been understated by \$2,563.62."

Pursuant to the above, the Audit Division increased the deficiency from \$818.03 to \$1,136.21 based upon a recomputation incorporating the proposed additional adjustment of \$2,563.62.

7. Review of the audit workpapers showed that during the year at issue petitioner closed several savings accounts. The funds withdrawn (inclusive of interest earned of \$2,563.62) on closing such accounts were redeposited into other accounts. The interest earned on these closed accounts was redeposited and included in the total deposits of \$156,071.14. Total withdrawals (inclusive of interest of \$2,563.62 from closed accounts) were used to reduce the total deposits in arriving at net deposits. This had the effect of eliminating the interest income from applications however the interest continued to be considered as a source of income. Correction of this results in the adjustment being increased by \$2,563.62.

8. Petitioner established an additional, previously uncredited source of funds of \$252.00. Said amount represents insurance benefits received by petitioner's wife during 1974 from the Veterans Administration.

CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law provides, in pertinent part, that:

"In any case before the tax commission under this article, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the tax commission:

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of a change or correction of federal taxable income or federal items of tax preference required to be reported under section six hundred fifty-nine, and of

which change or correction the tax commission had no notice at the time it mailed the notice of deficiency."

B. That the adjustments made to petitioner's claimed business and non-business expense deductions, as well as the adjustment made for additional cash required for ordinary living expenses, are sustained since petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that such adjustments were improper or erroneous.

C. That the Audit Division has sustained its burden of proof required pursuant to section 689(e)(3) of the Tax Law in establishing that an error was made in the source and application of funds by considering savings account interest reinvested as a source of funds and eliminating it as an application of funds. Correction of this error results in an additional adjustment of \$2,563.62.

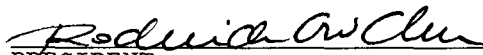
D. That in recomputing the adjustment for unexplained deposits, petitioner is properly allowed credit of \$252.00 as an additional source of funds (Finding of Fact "8", supra).


E. That the petition of James J. Milo is granted to the extent provided in Conclusion of Law "D", supra, and except as so granted, said petition is, in all other respects, denied.


F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated January 24, 1977 to be consistent with the decision rendered herein.

DATED: Albany, New York
MAY 27 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER