

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Orthan Bailey :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :  
of New York State Personal Income and Unincorporated :  
Business Taxes under Articles 22 and 23 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 1978 and 1979. :  
:

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon Orthhan Bailey, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Orthhan Bailey  
91 Boerum St., #22R  
Brooklyn, NY 11206

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
31st day of December, 1984.

David Parchuck

Nicola J. Williams  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Orthan Bailey :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :  
of New York State Personal Income and Unincorporated  
Business Taxes under Articles 22 and 23 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 1978 and 1979.  
:

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon Thomas W. Martin, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas W. Martin  
420 Kingston Avenue  
Brooklyn, NY 11225

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
31st day of December, 1984.

David Parchuck

Nicola J. Williams  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

December 31, 1984

Orthan Bailey  
91 Boerum St., #22R  
Brooklyn, NY 11206

Dear Mr. Bailey:

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 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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  
Thomas W. Martin  
420 Kingston Avenue  
Brooklyn, NY 11225  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ORTHAN BAILEY	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income and	:	
Unincorporated Business Taxes under Articles 22	:	
and 23 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 1978 and 1979.	:	

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Petitioner, Orthan Bailey, 91 Boerum Street, Apt. 22R, Brooklyn, New York 11206, filed a petition for redetermination of a deficiency or for refund of New York State personal income and unincorporated business taxes under Articles 22 and 23 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 1978 and 1979 (File Nos. 37239 and 37331).

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 January 12, 1984 at 1:15 P.M., with final briefs submitted on August 9, 1984. Petitioner appeared with Thomas W. Martin, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether field audit adjustments attributing additional income to petitioner for personal and unincorporated business tax purposes for the years 1978 and 1979 were proper.

FINDINGS OF FACT

1. Orthan Bailey and his wife, Alice Bailey, timely filed a New York State Income Tax Resident Return (with City of New York Personal Income Tax) for each of the years 1978 and 1979 under filing status "Married filing separately on one Return". On such returns, Orthan Bailey (hereinafter petitioner) reported business income of \$10,700.00 (1978) and \$3,819.56 (1979) derived from his activities engaged in as a taxicab owner and operator. Petitioner did not file an unincorporated business tax return for either year at issue herein.

2. On February 4, 1982, the Audit Division issued two (2) statements of audit changes to petitioner. One such statement was issued with respect to New York State and City personal income taxes. The other statement was issued with respect to unincorporated business tax. Both statements, which were issued as the result of a field audit, showed adjustments for "additional funds required" of \$9,455.00 for 1978 and \$21,384.00 for 1979. Accordingly, two (2) notices of deficiency were issued against petitioner on March 30, 1982. One such notice asserted additional New York State and City personal income taxes of \$3,845.21, penalties of \$192.26, plus interest of \$850.81, for a total due of \$4,888.28. The other notice asserted unincorporated business tax of \$1,240.00, penalties of \$565.20, plus interest of \$292.70, for a total due of \$2,097.90. Said penalties were asserted for personal income tax purposes under sections 685(b) of the Tax Law and T46-185.0(b) of the Administrative Code of the City of New York for negligence. For unincorporated business tax purposes, said penalties were asserted under sections 685(a)(1), 685(a)(2) and 685(b) of Article 22 of the Tax Law, as incorporated into Article 23 by section 722(a) of the Tax Law, for failure to file unincorporated business tax returns, failure to pay the taxes determined to be due and negligence, respectively.

3. The aforesated field audit adjustments were determined using the cash availability analysis method of income reconstruction as follows:

	<u>1978</u>	<u>1979</u>
<u>Requirements (Cash Out):</u>		
Machinery, Equipment	\$ 500.00	\$ -0-
Deposits to Checking Account	42,103.73	40,899.98
Deposits to Savings Account	2,763.52	4,600.00
Business Expenses Paid by Cash	4,381.36	5,392.27
Loan to Inter Boro Acres	-0-	2,000.00
Total Requirements	<u>\$49,748.61</u>	<u>\$52,892.25</u>
<u>Sources (Cash In):</u>		
Wife's Salary (Net)	\$ 9,254.99	\$11,981.79
Dividend	33.14	-0-
Gross Receipts - Business	23,006.27	18,007.24
Loan - Lincoln Savings Bank	10,000.00	-0-
Cash Drawing - Savings Account	1,700.00	8,984.51
Cash Reserve Loan	3,298.88	1,535.08
Total Sources	<u>\$47,293.28</u>	<u>\$40,508.62</u>
Shortage	\$ 2,455.33	\$12,383.63
Cash Living Expenses	7,000.00	9,000.00
Additional Income	<u>\$ 9,455.33</u>	<u>\$21,383.63</u>

4. The cash living expenses as applied in the above analysis were estimated by the Audit Division as follows:

	<u>Estimated Expense</u>	
<u>Expenditure Item</u>	<u>1978</u>	<u>1979</u>
Food	\$ 3,120.00	\$ 3,120.00
Outside Meals	1,040.00	1,040.00
Clothing	850.00	850.00
Medical Expenses	5,000.00	3,000.00
Utilities	1,800.00	1,800.00
Laundry - Dry Cleaning	520.00	520.00
Auto Expense	1,040.00	1,040.00
Vacation - Travel	1,500.00	1,500.00
Pocket Money	1,040.00	1,040.00
Total Living Expenses	<u>\$15,910.00</u>	<u>\$13,910.00</u>
Less: Paid by Check	<u>8,520.00</u> <sup>1</sup>	<u>4,832.00</u> <sup>1</sup>
Cash Living Expenses	<u>\$ 7,390.00</u>	<u>\$ 9,078.00</u>

<sup>1</sup> The computed cash living expenses of \$7,390.00 (1978) and \$9,078.00 (1979) were rounded to \$7,000.00 and \$9,000.00, respectively, in the cash availability analysis.

5. Petitioner's family consisted of himself and his wife in 1978. According to their federal tax return, a nephew resided with them during 1979. Said return indicated that petitioner and his wife provided more than half of their nephew's support during 1979.

6. As the result of a Tax Appeals Bureau pre-hearing conference, certain adjustments were made to the cash availability analysis as follows:

	<u>1978</u>	<u>1979</u>
(a) Deposits to Savings	(\$1,363.52)	
(b) Business Expenses Paid by Cash	( 382.71)	(\$ 223.17)
(c) Wife's Salary (Net)	494.00	446.00
(d) Loan to Inter Boro Acres <sup>2</sup>		( 2,000.00)
Total Adjustments	<u>(\$1,252.23)</u>	<u>(\$1,777.17)</u>

At the hearing held herein, the Audit Division conceded the aforestated adjustments.

7. Petitioner submitted documentation establishing that a deposit of \$4,600.00 made into his savings account on March 6, 1979 was actually his brother's money. Said sum was sent to petitioner by check dated February 16, 1979 from his brother in the Virgin Islands for petitioner to hold for safe-keeping. However, the record shows that petitioner withdrew \$4,950.00 from the same account on April 26, 1979. No information was provided by petitioner to show where the \$4,950.00 withdrawal was applied.

8. Petitioner established that on January 18, 1979 he received \$1,350.00 on settlement of a lawsuit resulting from a traffic accident. Petitioner was not credited with this amount as a source of funds on the cash availability analysis.

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<sup>2</sup> It was determined during the pre-hearing conference that the loan to Inter Boro Acres was paid by check rather than cash.

9. Based on information submitted by petitioner, the Audit Division conceded to a reduction of petitioner's 1979 cash living expenses from \$9,000.00 to \$6,633.86 as follows:

<u>Item</u>	<u>Estimated Cash Expenditure for 1979</u>
Food	\$1,515.00
Outside Meals	1,040.00
Clothing	-0-
Medical Expenses	1,328.86
Utilities	150.00
Laundry, Dry Cleaning, Recreation, Magazines, Papers and Books	520.00
Auto Expense and Transportation	1,040.00
Vacation, Travel	-0-
Pocket Money	1,040.00
Total 1979 Cash Living Expenses	<u>\$6,633.86</u>

10. With respect to petitioner's cash living expenses for 1978, the Audit Division's position is that no adjustments are warranted and the \$7,000.00, as estimated on the cash availability analysis, should stand. Although changes were made to certain individual items comprising the total cash living expenses, the Audit Division claims the net total for 1978 should remain unchanged based on its analysis of the information submitted by petitioner subsequent to the hearing held herein.

11. Petitioner submitted no documentation which would establish that he is properly entitled to a greater reduction in cash living expenses for either year at issue than that made by the Audit Division based on its analysis of the material submitted by him subsequent to the hearing held herein.

#### CONCLUSIONS OF LAW

A. That petitioner has failed to show what use he made of the \$4,950.00 withdrawal on April 26, 1979. Accordingly, it is concluded that \$4,600.00 of said withdrawal were used to repay his brother. This being the case, although petitioner is properly entitled to an additional source of cash of \$4,600.00



representing the deposit of his brother's \$4,600.00 on March 6, 1979, the withdrawal of \$4,950.00 on April 26, 1979, which was included in cash drawing as a source, is also to be adjusted by \$4,600.00 thereby offsetting the deposit.

B. That petitioner is properly entitled to credit of \$1,350.00 as an additional source for 1979, said amount representing damages received on January 18, 1979 resulting from a traffic accident.

C. That the adjustments of \$1,252.23 for 1978 and \$1,777.17 for 1979 made at the pre-hearing conference and conceded as correct by the Audit Division are hereby allowed.

D. That the total cash living expenses for 1979 are hereby reduced from \$9,000.00 to \$6,633.86 (see Finding of Fact "9", supra).

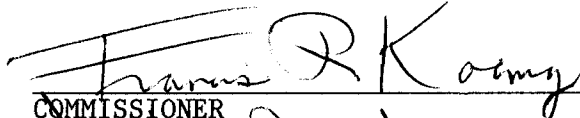
E. That the petition of Orthan Bailey is granted to the extent provided in Conclusions of Law "B", "C" and "D", supra, and, except as so granted, said petition is, in all other respects, denied. The Audit Division is hereby directed to adjust the two notices of deficiency dated March 30, 1982 to be consistent with the decision rendered herein.

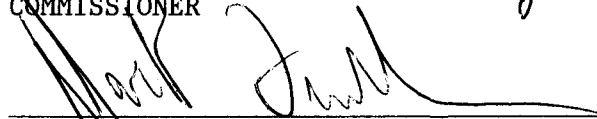
DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

REQUEST FOR BETTER ADDRESS

Requested by <b>Tax Appeals Bureau</b> Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit <b>Tax Appeals Bureau</b> Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request  1/24/85
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition SC - Dec - 12/31/84
Name Orthan Bailey	
Address 91 Boerum St., #22R Brooklyn, N.Y. 11206	

## Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	Unclaimed

Searched by DP	Section	Date of Search 1/24/85
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

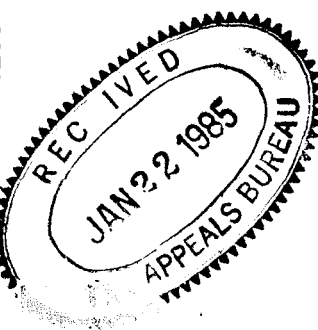
**CERTIFIED**

**P 470 316 342**

**MAIL**

**Jan 16 1985**

Orthan Bailey  
91 Boerum Est., #22R  
Brooklyn, NY 11206



CLAIM CHECK  
NO  
**235388**

☐ HOLD

DATE **1/3/85**  
1ST NOTICE

2ND NOTICE

RETURN

Detached from  
PS Form 3849-A  
Oct. 1980

**1/8 1/18**

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

December 31, 1984

Orthan Bailey  
91 Boerum St., #22R  
Brooklyn, NY 11206

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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  
Thomas W. Martin  
420 Kingston Avenue  
Brooklyn, NY 11225  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

ORTHAN BAILEY

DECISION

for Redetermination of a Deficiency or for  
Refund of New York State Personal Income and  
Unincorporated Business Taxes under Articles 22  
and 23 of the Tax Law and New York City  
Personal Income Tax under Chapter 46, Title T  
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FINDINGS OF FACT

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2. On February 4, 1982, the Audit Division issued two (2) statements of audit changes to petitioner. One such statement was issued with respect to New York State and City personal income taxes. The other statement was issued with respect to unincorporated business tax. Both statements, which were issued as the result of a field audit, showed adjustments for "additional funds required" of \$9,455.00 for 1978 and \$21,384.00 for 1979. Accordingly, two (2) notices of deficiency were issued against petitioner on March 30, 1982. One such notice asserted additional New York State and City personal income taxes of \$3,845.21, penalties of \$192.26, plus interest of \$850.81, for a total due of \$4,888.28. The other notice asserted unincorporated business tax of \$1,240.00, penalties of \$565.20, plus interest of \$292.70, for a total due of \$2,097.90. Said penalties were asserted for personal income tax purposes under sections 685(b) of the Tax Law and T46-185.0(b) of the Administrative Code of the City of New York for negligence. For unincorporated business tax purposes, said penalties were asserted under sections 685(a)(1), 685(a)(2) and 685(b) of Article 22 of the Tax Law, as incorporated into Article 23 by section 722(a) of the Tax Law, for failure to file unincorporated business tax returns, failure to pay the taxes determined to be due and negligence, respectively.

3. The aforesaid field audit adjustments were determined using the cash availability analysis method of income reconstruction as follows:

	<u>1978</u>	<u>1979</u>
<u>Requirements (Cash Out):</u>		
Machinery, Equipment	\$ 500.00	\$ -0-
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Cash Living Expenses	7,000.00	9,000.00
Additional Income	<u>\$ 9,455.33</u>	<u>\$21,383.63</u>

4. The cash living expenses as applied in the above analysis were estimated by the Audit Division as follows:

<u>Expenditure Item</u>	<u>Estimated Expense</u>	
	<u>1978</u>	<u>1979</u>
Food	\$ 3,120.00	\$ 3,120.00
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Vacation - Travel	1,500.00	1,500.00
Pocket Money	1,040.00	1,040.00
Total Living Expenses	<u>\$15,910.00</u>	<u>\$13,910.00</u>
Less: Paid by Check	<u>8,520.00</u> <sup>1</sup>	<u>4,832.00</u> <sup>1</sup>
Cash Living Expenses	<u>\$ 7,390.00</u>	<u>\$ 9,078.00</u>

<sup>1</sup> The computed cash living expenses of \$7,390.00 (1978) and \$9,078.00 (1979) were rounded to \$7,000.00 and \$9,000.00, respectively, in the cash availability analysis.

5. Petitioner's family consisted of himself and his wife in 1978. According to their federal tax return, a nephew resided with them during 1979. Said return indicated that petitioner and his wife provided more than half of their nephew's support during 1979.

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Total Adjustments	<u>(\$1,252.23)</u>	<u>(\$1,777.17)</u>

At the hearing held herein, the Audit Division conceded the aforestated adjustments.

7. Petitioner submitted documentation establishing that a deposit of \$4,600.00 made into his savings account on March 6, 1979 was actually his brother's money. Said sum was sent to petitioner by check dated February 16, 1979 from his brother in the Virgin Islands for petitioner to hold for safe-keeping. However, the record shows that petitioner withdrew \$4,950.00 from the same account on April 26, 1979. No information was provided by petitioner to show where the \$4,950.00 withdrawal was applied.

8. Petitioner established that on January 18, 1979 he received \$1,350.00 on settlement of a lawsuit resulting from a traffic accident. Petitioner was not credited with this amount as a source of funds on the cash availability analysis.

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<sup>2</sup> It was determined during the pre-hearing conference that the loan to Inter Boro Acres was paid by check rather than cash.



9. Based on information submitted by petitioner, the Audit Division conceded to a reduction of petitioner's 1979 cash living expenses from \$9,000.00 to \$6,633.86 as follows:

<u>Item</u>	<u>Estimated Cash Expenditure for 1979</u>
Food	\$1,515.00
Outside Meals	1,040.00
Clothing	-0-
Medical Expenses	1,328.86
Utilities	150.00
Laundry, Dry Cleaning, Recreation, Magazines, Papers and Books	520.00
Auto Expense and Transportation	1,040.00
Vacation, Travel	-0-
Pocket Money	1,040.00
Total 1979 Cash Living Expenses	<u>\$6,633.86</u>

10. With respect to petitioner's cash living expenses for 1978, the Audit Division's position is that no adjustments are warranted and the \$7,000.00, as estimated on the cash availability analysis, should stand. Although changes were made to certain individual items comprising the total cash living expenses, the Audit Division claims the net total for 1978 should remain unchanged based on its analysis of the information submitted by petitioner subsequent to the hearing held herein.

11. Petitioner submitted no documentation which would establish that he is properly entitled to a greater reduction in cash living expenses for either year at issue than that made by the Audit Division based on its analysis of the material submitted by him subsequent to the hearing held herein.

#### CONCLUSIONS OF LAW

A. That petitioner has failed to show what use he made of the \$4,950.00 withdrawal on April 26, 1979. Accordingly, it is concluded that \$4,600.00 of said withdrawal were used to repay his brother. This being the case, although petitioner is properly entitled to an additional source of cash of \$4,600.00

representing the deposit of his brother's \$4,600.00 on March 6, 1979, the withdrawal of \$4,950.00 on April 26, 1979, which was included in cash drawing as a source, is also to be adjusted by \$4,600.00 thereby offsetting the deposit.

B. That petitioner is properly entitled to credit of \$1,350.00 as an additional source for 1979, said amount representing damages received on January 18, 1979 resulting from a traffic accident.

C. That the adjustments of \$1,252.23 for 1978 and \$1,777.17 for 1979 made at the pre-hearing conference and conceded as correct by the Audit Division are hereby allowed.

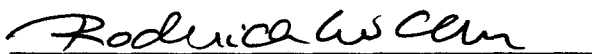
D. That the total cash living expenses for 1979 are hereby reduced from \$9,000.00 to \$6,633.86 (see Finding of Fact "9", supra).

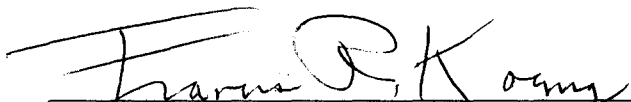
E. That the petition of Orthman Bailey is granted to the extent provided in Conclusions of Law "B", "C" and "D", supra, and, except as so granted, said petition is, in all other respects, denied. The Audit Division is hereby directed to adjust the two notices of deficiency dated March 30, 1982 to be consistent with the decision rendered herein.


DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER