

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Enrique E. & Audrey M. Chapman : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS Personal Income :
Tax under Article 22 of the Tax Law, New York City :
Personal Income Tax under Chapter 46, Title T of :
the Administrative Code of the City of New York and :
NYS Unincorporated Business Tax under Article 23 of :
the Tax Law for the Years 1977 & 1978. :

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 18th day of January, 1984, he served the within notice of Decision by certified mail upon Enrique E. & Audrey M. Chapman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Enrique E. & Audrey M. Chapman
801 Tilden St. #5H
Bronx, NY 10467

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
18th day of January, 1984.




pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Enrique E. & Audrey M. Chapman : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS Personal :
Income Tax under Article 22 of the Tax Law, New :
York City Personal Income Tax under Chapter 46, :
Title T of the Administrative Code of the City of :
New York and New York State Unincorporated Business :
Tax under Article 23 of the Tax law for the Years :
1977 & 1978.

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 18th day of January, 1984, he served the within notice of Decision by certified mail upon Bruce S. Schaeffer, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

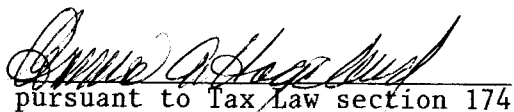
Bruce S. Schaeffer
645 Fifth Ave.
New York, NY 10022

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
18th day of January, 1984.




pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

Enrique E. & Audrey M. Chapman
801 Tilden St. #5H
Bronx, NY 10467

Dear Mr. & Mrs. Chapman:

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, 1312 & 722 of the Tax Law, 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
Bruce S. Schaeffer
645 Fifth Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ENRIQUE E. CHAPMAN and AUDREY M. CHAPMAN	:	DECISION
for Redetermination of Deficiencies or for	:	
Refunds of New York State Personal Income Tax	:	
under Article 22 of the Tax Law, New York City	:	
Personal Income Tax under Chapter 46, Title T	:	
of the Administrative Code of the City of New	:	
York and New York State Unincorporated Business	:	
Tax under Article 23 of the Tax Law for the	:	
Years 1977 and 1978.	:	

Petitioners, Enrique E. Chapman and Audrey M. Chapman, 801 Tilden Street, #5H, Bronx, New York 10467, filed a petition for redetermination of deficiencies or for refunds of New York State personal income tax under Article 22 of the Tax Law, New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York and New York State unincorporated business tax under Article 23 of the Tax Law for the years 1977 and 1978 (File Nos. 35478, 35479, 35480 and 35481).

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 May 13, 1983 at 9:15 A.M. Petitioners appeared by Bruce S. Schaeffer, Esq. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether an adjustment attributing additional income to petitioners as the result of a field audit was proper.

FINDINGS OF FACT

1. Petitioners, Enrique E. Chapman and Audrey M. Chapman, timely filed a joint New York State Income Tax Resident Return (with New York City Personal Income Tax) for each of the years 1977 and 1978. On each return, petitioner Enrique E. Chapman reported business income derived from his activities engaged in as a "beautician". Petitioner Audrey M. Chapman was listed as a housewife. Mr. Chapman also filed an unincorporated business tax return for each of said years whereon he reported net profits of \$10,378.00 (1977) and \$12,582.00 (1978) derived from his beautician business known as "La Femme Beauty Lounge" located at 3359 Fish Avenue, Bronx, New York.

2. As the result of a field audit, on November 10, 1980 the Audit Division issued a Statement of Personal Income Tax Audit Changes wherein adjustments were made relative to New York State and City personal income taxes as follows:

	<u>1977</u>	<u>1978</u>
Net business adjustment (shortage in cash availability)	\$19,447.00	\$14,950.00
Medical adjustment	583.00	499.00
Net Adjustment	<u>\$20,030.00</u>	<u>\$15,449.00</u>

A Statement of Unincorporated Business Tax Audit Changes was also issued under the same date wherein the "shortage of cash availability" adjustments of \$19,447.00 (1977) and \$14,950.00 (1978) were made for unincorporated business tax purposes. Accordingly, four (4) notices of deficiency were issued against petitioners on January 22, 1981 as follows:

	<u>Year</u>	<u>Tax Asserted</u>	<u>Amount</u>	<u>Total Penalty and Interest</u>	<u>Total Deficiency</u>
a.	1977	Unincorporated Business Tax	\$1,000.87		
	1977	NYC Personal Income Tax	608.07		
			<u>\$1,608.94</u>	\$501.40	\$2,110.34

b.	1977	NYS Personal Income Tax	\$1,925.30	\$600.02	\$2,525.32
c.	1978	Unincorporated Business Tax	\$ 697.47		
	1978	NYC Personal Income Tax	396.99		
			<u>\$1,094.46</u>	\$248.05	\$1,342.51
d.	1978	NYS Personal Income Tax	\$1,189.23	\$269.53	<u>\$1,458.76</u>
Total 1977 and 1978 Deficiencies					<u>\$7,436.93</u>

Negligence penalties under Tax Law sections 685(b) and 722(a) and under Administrative Code section T46-185.0.(b) were asserted on each of the above-stated deficiencies.

3. Petitioner Enrique E. Chapman's 1977 gross business income, as reported on his Federal Schedule C, was \$20,921.00, which was comprised of "net receipts or sales including tips" of \$16,266.00 and rent income of \$4,655.00. His 1978 gross business income as reported was \$23,554.00, which was comprised of "net receipts or sales including tips" of \$18,024.00 and rent income of \$5,530.00. Other than the above, the only other income reported on petitioners' returns was interest income of \$1,013.00 (1977) and \$775.00 (1978).

4. The adjustments for "shortage in cash availability" were computed through use of a cash availability analysis prepared for each year as follows:

		<u>1977</u>
<u>Cash In</u>		
Drawings - Cash		<u>\$11,138.00</u>
<u>Cash Out</u>		
Deposits to checking	\$ 8,825.00	
Deposits to savings	11,953.00	
Cash Living Expenses	9,807.00	
	<u>\$30,585.00</u>	
Cash Shortage		<u>\$19,447.00</u>
		<u>1978</u>
<u>Cash In</u>		
Drawings - Cash	\$ 9,395.00	
Withdrawal from savings	3,410.00	
	<u>\$12,805.00</u>	

Cash Out	
Deposits to checking	\$ 7,550.00
Deposits to savings	5,428.00
Cash Living Expenses	14,777.00
	<u>\$27,755.00</u>
Cash Shortage	<u>\$14,950.00</u>

5. The figures incorporated into the aforestated analysis were drawn from the business books as well as petitioners' personal savings and checking accounts. The amount determined for cash living expenses for 1977 was based on a family of four. The greater amount determined for 1978 cash living expenses was based on the arrival in said year of two additional children of petitioners from Santa Domingo which increased their family size to six.

6. Petitioners contended that the cash shortages were comprised of nontaxable funds in the form of money brought with them on immigration to this country and not previously deposited and various cash gifts.

7. No evidence, documentary or otherwise, was presented at the hearing held herein on petitioners' behalf.

CONCLUSIONS OF LAW

A. That sections 689(e) and 722(a) of the Tax Law and section T46-189.0.(e) of Chapter 46, Title T of the Administrative Code of the City of New York provide that in any case before the tax commission, the burden of proof shall be upon the petitioner except for three issues, none of which are applicable herein.

B. That petitioners have failed to sustain their burden of proof to show that the deficiencies asserted herein were erroneous or improper.

C. That the petition of Enrique E. Chapman and Audrey M. Chapman is denied and the four (4) notices of deficiency dated January 22, 1981 are

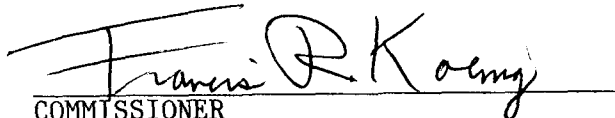
sustained, together with such additional interest and penalty as may be lawfully owing.

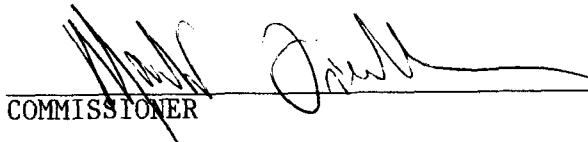
DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER