

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Athanasios & Nikoletta Koutsothanasis :  
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 :  
New York City Personal Income Tax under Chapter 46, :  
Title T of the Administrative Code of the City of :  
New York for the Year 1977. :  
:

AFFIDAVIT OF MAILING

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 29th day of February, 1984, he served the within notice of Decision by certified mail upon Athanasios & Nikoletta Koutsothanasis, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Athanasios & Nikoletta Koutsothanasis  
69-04 Woodside Ave.  
Woodside, NY 11377

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  
29th day of February, 1984.

*David Parchuck*

*James A. [Signature]*  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Athanasios & Nikoletta Koutsothanasis :  
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 :  
New York City Personal Income Tax under Chapter 46, :  
Title T of the Administrative Code of the City of :  
New York for the Year 1977. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

State of New York }  
County of Albany } ss.:

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 29th day of February, 1984, he served the within notice of Decision by certified mail upon Vasilios Exarchos, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Vasilios Exarchos  
32-15 Broadway  
Long Island City, NY 11106

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  
29th day of February, 1984.

David Parchuck

Carmin A. Haylund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 29, 1984

Athanasios & Nikoletta Koutsothanasis  
69-04 Woodside Ave.  
Woodside, NY 11377

Mr. & Mrs. Koutsothanasis:

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 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  
Vasilios Exarchos  
32-15 Broadway  
Long Island City, NY 11106  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
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of	:	
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ATHANASIOS and NIKOLETTA KOUTSOTHANASIS	:	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 New York City Personal Income Tax	:	
under Chapter 46, Title T of the Administrative	:	
Code of the City of New York for the Year 1977.	:	

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Petitioners, Athanasios and Nikoletta Koutsathanasis, 69-04 Woodside Avenue, Woodside, New York 11377, 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, and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File Nos. 30934 and 30935).

A formal 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 27, 1983 at 9:15 A.M., with all additional documentation to be submitted by July 11, 1983. Petitioner Athanasios Koutsathanasis appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irving Atkins, Esq., of counsel).

#### ISSUE

Whether a field audit adjustment attributing additional business income to petitioners during the 1977 tax year was proper.

FINDINGS OF FACT

1. Petitioners, Athanasios and Nikoletta Koutsothanasis, jointly filed a 1977 New York State Resident Income Tax Return, with New York City resident income tax, on which business income of \$13,950.00 and a loss from rental property of \$2,089.00 were reported. Attached to said return was a 1977 New York State Unincorporated Business Tax Return reporting a net profit of \$13,950.00 from a grocery store business. Said return listed both petitioners' names as the taxpayers and the return was signed by Mr. Koutsothanasis.

2. On September 20, 1979, the Audit Division issued a Statement of Audit Changes to petitioners for the 1977 tax year. Said Statement resulted from a field audit, using the cash availability method of income reconstruction, that found that petitioners had additional income for the year in issue of \$45,301.00. The additional income and another adjustment of \$550.00, which is not contested by petitioners, comprise the net adjustment of \$45,851.00 for New York State and New York City personal income tax. The unincorporated business tax net adjustment of \$43,091.00 includes the additional income of \$45,301.00 less an additional allowance for taxpayer's services of \$2,210.00. Penalties were asserted pursuant to sections 685(b) and 685(c) of the Tax Law for both New York State personal income tax and unincorporated business tax. Penalties for New York City personal income tax were asserted pursuant to sections T46-185.0(b) and T46-185.0(c) of the Administrative Code of the City of New York.

3. A Notice of Deficiency was issued on January 30, 1980 to petitioners for 1977 asserting additional New York State and New York City personal income tax of 7,476.43 plus penalty and interest. A Notice of Deficiency was issued on the same date to petitioner Athanasios Koutsothanasis for 1977 asserting additional unincorporated business tax of \$2,422.81, plus penalty and interest.

4. At a pre-hearing conference on March 24, 1981, the Audit Division recomputed petitioners' personal income tax and unincorporated business tax as if each petitioner had filed separate personal and unincorporated business tax returns. The total net adjustment amounts noted in Finding of Fact "2" were not changed by this recomputation. The Department of Taxation and Finance adopted the recomputation in its Answer to petitioners' Perfected Petition. Said Answer sets forth the liabilities asserted reflecting such recomputation as follows<sup>1</sup>:

	<u>Additional Tax Due</u>	<u>Penalty 685(b) &amp; (c)</u>	<u>Interest to April 15, 1981</u>	<u>Total</u>
(1) <u>PIT</u>				
(H)	\$1,870.36	(b) \$ 93.52	\$476.94	\$2,440.82
(W)	3,633.42	(b & c) 191.92	926.52	4,751.86
(2) <u>UBT</u>				
(H)	721.66	(b) 36.08	184.02	941.76
(W)	1,177.00	(b & c) 71.82	300.14	1,548.96

5. The cash availability analysis prepared by the Audit Division during the course of its audit showed total cash available to petitioners from gross business receipts and rental property of \$69,925.00. Said analysis showed that petitioners had total cash requirements during 1977 of \$115,226.00, leaving unexplained funds of \$45,301.00. The Audit Division treated these unexplained funds as additional income taxable to petitioners.

6. Mr. Koutsothanasis maintained that he had additional sources of funds in 1977 from nontaxable sources, such as loans and cash on hand, which were not

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<sup>1</sup> The propriety of said recomputation is not at issue, herein, inasmuch as the Department accepted such recomputation and reduced the notices of deficiency accordingly in its Answer.

taken into consideration in the Audit Division's calculations. He also contended that he was not engaged in an unincorporated business during 1977 and that most of his time was occupied by converting a two-family house that he owned jointly with his brother into four rental units. No documentary evidence was introduced at the hearing or within the period allowed after the hearing to support these contentions.

#### CONCLUSIONS OF LAW

A. That the burden of proof is upon petitioners to show wherein the audit adjustments are erroneous or improper (Sections 689(e) and 722 (a) of the Tax Law; section T46-189.0(e) of the Administrative Code of the City of New York). Since petitioners have not submitted any credible evidence to support their allegations, they have not established that the audit adjustments were erroneous or improper.

B. That the Notice of Deficiency issued on January 30, 1980 to petitioners, Athanasios and Nikoletta Koutsothanasis, asserting New York State and New York City personal income tax (PIT) in the modified amounts noted in Finding of Fact "4", plus additional penalty and interest lawfully due, is sustained. The Notice of Deficiency issued on January 30, 1980 to petitioner Athanasios Koutsothanasis asserting New York State unincorporated business tax is reduced to include only those amounts due from Mr. Koutsothanasis for unincorporated business tax (UBT), plus additional penalty and interest lawfully due, as shown in Finding of Fact "4". Mr. Koutsothanasis cannot be held liable for unincorporated business tax which may be due from Mrs. Koutsothanasis.

C. That no decision is rendered regarding unincorporated business tax allegedly due from Mrs. Koutsothanasis as a Notice of Deficiency asserting said tax was not issued pursuant to sections 681 and 722 of the Tax Law.

D. That the petition of Athanasios and Nikoletta Koutsothanasis is granted to the extent indicated in Conclusion of Law "B" and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 29 1984

Rodrick W. Chen  
PRESIDENT

Francis R. Kolm  
COMMISSIONER

Mark J. Jurek  
COMMISSIONER



**VASILIOS PHILOS EXARCHOS**

ACCOUNTANT & AUDITOR

TELEPHONE 212-274-6006

32-15 BROADWAY, LONG ISLAND CITY, N. Y. 11106

MEMBER OF NATIONAL  
SOCIETY OF PUBLIC ACCOUNTANTS

EMPIRE STATE ASSOCIATION  
OF PUBLIC ACCOUNTANTS

March 15, 1984

RECEIVED  
DEPARTMENT OF  
TAXATION AND FINANCE  
MAR 23 1984  
LAW BUREAU

N.Y.S. Dept. Taxation and Finance  
Law Bureau--Litigation Unit  
Building #9, State Campus  
Albany, New York 12227

REF: Athanasios & Nikoletta  
Koutsothanasis  
69-04 Woodside Avenue  
Woodside, New York 11377

Gentlemen:

Enclosed herewith please find "Decision of the State Tax  
Commission."

We are returning the enclosed, because we are not the  
representative for Athanasios and Nikoletta Koutsothanasis.

Very Truly Yours,

*Helen P. Exarchos*

Helen P. Exarchos

Encl:1



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

February 29, 1984

Athanasios & Nikoletta Koutsothanasis  
69-04 Woodside Ave.  
Woodside, NY 11377

Mr. & Mrs. Koutsothanasis:

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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  
Vasilios Exarchos  
32-15 Broadway  
Long Island City, NY 11106  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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ATHANASIOS and NIKOLETTA KOUTSOTHANASIS	:	DECISION
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Refund of 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 Year 1977.	:	

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#### ISSUE

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FINDINGS OF FACT

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(H)	721.66	(b) 36.08	184.02	941.76
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5. The cash availability analysis prepared by the Audit Division during the course of its audit showed total cash available to petitioners from gross business receipts and rental property of \$69,925.00. Said analysis showed that petitioners had total cash requirements during 1977 of \$115,226.00, leaving unexplained funds of \$45,301.00. The Audit Division treated these unexplained funds as additional income taxable to petitioners.

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<sup>1</sup> The propriety of said recomputation is not at issue, herein, inasmuch as the Department accepted such recomputation and reduced the notices of deficiency accordingly in its Answer.

taken into consideration in the Audit Division's calculations. He also contended that he was not engaged in an unincorporated business during 1977 and that most of his time was occupied by converting a two-family house that he owned jointly with his brother into four rental units. No documentary evidence was introduced at the hearing or within the period allowed after the hearing to support these contentions.

#### CONCLUSIONS OF LAW

A. That the burden of proof is upon petitioners to show wherein the audit adjustments are erroneous or improper (Sections 689(e) and 722 (a) of the Tax Law; section T46-189.0(e) of the Administrative Code of the City of New York). Since petitioners have not submitted any credible evidence to support their allegations, they have not established that the audit adjustments were erroneous or improper.

B. That the Notice of Deficiency issued on January 30, 1980 to petitioners, Athanasios and Nikoletta Koutsothanasis, asserting New York State and New York City personal income tax (PIT) in the modified amounts noted in Finding of Fact "4", plus additional penalty and interest lawfully due, is sustained. The Notice of Deficiency issued on January 30, 1980 to petitioner Athanasios Koutsothanasis asserting New York State unincorporated business tax is reduced to include only those amounts due from Mr. Koutsothanasis for unincorporated business tax (UBT), plus additional penalty and interest lawfully due, as shown in Finding of Fact "4". Mr. Koutsothanasis cannot be held liable for unincorporated business tax which may be due from Mrs. Koutsothanasis.

C. That no decision is rendered regarding unincorporated business tax allegedly due from Mrs. Koutsothanasis as a Notice of Deficiency asserting said tax was not issued pursuant to sections 681 and 722 of the Tax Law.

D. That the petition of Athanasios and Nikoletta Koutsothanasis is granted to the extent indicated in Conclusion of Law "B" and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

FEB 29 1984

STATE TAX COMMISSION

Rodrick W. Cline  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Michael J. J. J.  
COMMISSIONER

REQUEST FOR BETTER ADDRESS

Requester <b>Tax Appeals Bureau</b> Room 107 - Bldg. #9 State Campus Albany, New York 12227	<b>Tax Appeals Bureau</b> Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request  <i>3/28/84</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition <i>For. - Dec. - 2/29/84</i>
Name <i>Athanasios &amp; Nikoletta Koutsathanassi</i>	
Address <i>69-04 Woodside Ave. Woodside, N. Y. 11377</i>	

## Results of search by Files

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

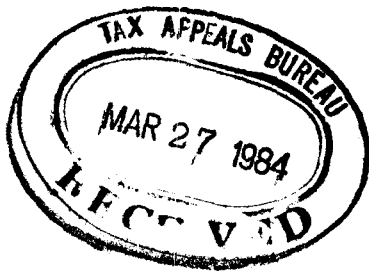
Searched by  <i>D.P.</i>	Section	Date of Search  <i>3/28/84</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER



TA 26 (9-79)

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



~~Athanasios & Nikoletta Koutsothanasis  
69-04 Woodside Ave.  
Woodside, NY 11377~~

**CERTIFIED**

**P 470 315 234**

**MAIL**

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

February 29, 1984

Athanasios & Nikoletta Koutsothanasis  
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Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
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STATE OF NEW YORK

STATE TAX COMMISSION

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C. That no decision is rendered regarding unincorporated business tax allegedly due from Mrs. Koutsothanasis as a Notice of Deficiency asserting said tax was not issued pursuant to sections 681 and 722 of the Tax Law.

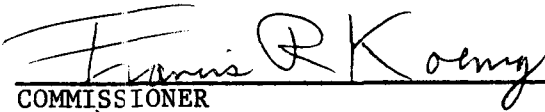
D. That the petition of Athanasios and Nikoletta Koutsothanasis is granted to the extent indicated in Conclusion of Law "B" and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

FEB 29 1984

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER