

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Joseph Weissman & Anna Weissman (Deceased) :  
for Redetermination of a Deficiency or for Refund :  
of New York State Personal Income Tax and :  
Unincorporated Business Tax 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 1977, :  
1978 and 1979. :

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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 9th day of November, 1984, he served the within notice of Decision by certified mail upon Joseph Weissman & Anna Weissman (Deceased), the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Weissman & Anna Weissman (Deceased)  
245-03 149th Rd.  
Rosedale, NY 11422

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  
9th day of November, 1984.

David Parchuck

Edward A. Magallon  
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 :  
Joseph Weissman & Anna Weissman (Deceased) :  
for Redetermination of a Deficiency or for Refund :  
of New York State Personal Income Tax and :  
Unincorporated Business Tax under Articles 22 and :  
23 of the Tax Law and New York City Personal Income :  
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1978 and 1979. :

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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 9th day of November, 1984, he served the within notice of Decision by certified mail upon Meyer Goldman, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Meyer Goldman  
Goldman & Goldman  
172-21 Hillside Ave.  
Jamaica, NY 11432

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  
9th day of November, 1984.

David Parchuck

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

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

November 9, 1984

Joseph Weissman & Anna Weissman (Deceased)  
245-03 149th Rd.  
Rosedale, NY 11422

Dear Mr. Weissman:

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  
Meyer Goldman  
Goldman & Goldman  
172-21 Hillside Ave.  
Jamaica, NY 11432  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOSEPH WEISSMAN AND ANNA WEISSMAN (DECEASED)	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
and Unincorporated Business Tax 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 1977, 1978 and 1979.	:	

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Petitioners, Joseph Weissman and Anna Weissman, 245-03 149th Road, Rosedale, New York 11422, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax and unincorporated business tax 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 1977, 1978 and 1979 (File Nos. 36546, 36941, 36942 and 36943).

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 9:15 A.M., with all briefs to be submitted by February 12, 1984. Petitioner Joseph Weissman appeared with Meyer Goldman, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether an adjustment attributing additional unreported business income to petitioner Joseph Weissman was proper.

FINDINGS OF FACT

1. Petitioners, Joseph Weissman and Anna Weissman, timely filed a joint New York State Income Tax Resident Return (with New York City Personal Income Tax) for each of the years 1977, 1978 and 1979. On each of said returns, Joseph Weissman (hereinafter petitioner) reported business income derived from his activities engaged in as a medallioned taxicab owner and operator as follows: 1977 - \$9,803.00, 1978 - \$10,999.00, 1979 - \$9,990.00. Petitioner filed an unincorporated business tax return for each year at issue herein.

2. On September 15, 1981, the Audit Division issued two (2) statements of audit changes to Joseph Weissman and Anna Weissman. One such statement, which was issued to both Mr. and Mrs. Weissman, recomputed their New York State and City personal income taxes for the years at issue based on adjustments for "additional income" made each year as follows: 1977 - \$15,734.00, 1978 - \$10,785.00, 1979 - \$11,812.00. Said adjustments were made as the result of a field audit conducted. The second statement, which was issued solely to petitioner Joseph Weissman, incorporated said adjustments for the purpose of recomputing unincorporated business tax.

3. Based on the above, four (4) notices of deficiency were issued against Joseph Weissman and Anna Weissman as follows:

<u>Date of Issuance</u>	<u>Years</u>	<u>Taxes Asserted</u>	<u>Total Tax Deficiency</u>
a - January 22, 1982	1977, 1978	New York State personal income tax	\$2,056.76
b - January 22, 1982	1977, 1978	New York City personal income tax	\$ 708.89
c - March 30, 1982	1979	New York State and New York City personal income tax	\$1,148.15
d - March 30, 1982	1977, 1978 and 1979	unincorporated business tax	\$1,851.24

4. Negligence penalties were asserted on each of the aforesaid notices of deficiency pursuant to sections 685(b) and 722(a) of the Tax Law and section T46-185.0(b) of Chapter 46, Title T of the Administrative Code of the City of New York. Interest was also asserted on each of said notices.

5. On February 18, 1981, Joseph Weissman and Anna Weissman executed a consent form extending the period of limitations for assessment with respect to their 1977 returns to April 15, 1982. Said consent was validated by the Audit Division on February 20, 1981.

6. The field audit adjustments for "additional income" were determined through use of an indirect method of income reconstruction. The method used herein was the cash availability analysis method. Said adjustments were computed pursuant to such method as follows:

	<u>1977</u>	<u>1978</u>	<u>1979</u>
"Cash In:			
Gross Income			
[reduced by cost of goods sold]	\$21,040.00	\$22,560.00	\$20,290.00
Net Loans	14,411.00	7,652.00	9,145.00 <sup>1</sup>
Total Available	<u>\$35,451.00</u>	<u>\$30,212.00</u>	<u>\$29,445.00</u>
Cash Out:			
Deposits to Checking Account	\$30,690.00	\$25,926.00	\$27,649.00
Deposits to Savings	2,853.00	506.00	--
Business Expenses Paid in Cash	3,342.00	3,147.00	3,825.00
Total Out	<u>\$36,885.00</u>	<u>\$29,579.00</u>	<u>\$31,474.00</u>
Cash Available/Short	(\$ 1,434.00)	(\$ 643.00)	(\$ 2,029.00)
Cash required for food, rent, etc.	14,300.00	11,000.00	11,610.00
Understatement of Income	<u>\$15,734.00</u>	\$11,643.00	\$13,639.00
Less: Reimbursements from son for checks to newspaper route		858.00	1,827.00
		<u>\$10,785.00</u>	<u>\$11,812.00"</u>

7. Review of the computations incorporated into the cash availability analysis shows that the Audit Division erred in computing the "cash available/short" for 1978. Said analysis shows a shortage of \$643.00. However, the

<sup>1</sup> Total available for 1979 was overstated by \$10.00.

total available of \$30,212.00 less the total cash out of \$29,579.00, properly yields remaining cash available of \$633.00. Accordingly, the Audit Division's adjustment for "additional income" for 1978 was overstated by \$1,276.00.

8. During the years at issue, petitioner borrowed several thousand dollars from credit unions. The loans he took were constantly renegotiated. Since he was experiencing financial difficulties, he engaged an attorney, Mr. Oscar Katz, to manage his financial affairs. Petitioner turned over a portion of his business receipts and all of his loan proceeds to Mr. Katz. Mr. Katz, in turn, used this money to pay certain expenses for petitioner and make payments against petitioner's loans. Any remaining money was then returned to petitioner by check or in the form of cash. Memoranda of accounting were issued to petitioner on a periodic basis.

9. The amounts the auditor credited petitioner as "cash in" for "net loans" were based on her analysis of petitioner's loan documents. During the hearing, the auditor testified that subsequent to the issuance of the notices of deficiency, she realized that the amounts credited for "net loans" were overstated. Based on her recomputation, she testified that the items designated "net loans" should properly consist of all money returned to petitioner by Mr. Katz. Said amounts, she contended, were \$14,974.00 (1977), \$3,275.00 (1978) and \$5,600.00 (1979).

10. Subsequent to the hearing, petitioner submitted documentation from Mr. Katz which establishes that the total money returned to petitioner each year was \$14,973.54 (1977), \$3,274.68 (1978) and \$5,600.00 (1979). These amounts tie into those which the auditor claims to be correct.

11. Although the auditor claimed that "cash in" credited to petitioner on the cash availability analysis was overstated, the Audit Division did not make claim to assert a greater deficiency.

12. The "cash out" portion of the cash availability analysis was not disputed by either party to the proceeding.

13. Pursuant to the auditor's schedule of cash living expenses, petitioner was credited with a cash expenditure during 1977 of \$4,000.00 for his son's Bar Mitzvah. Although petitioner alleged that said amount is grossly overstated, no evidence, documentary or otherwise, was submitted to establish wherein said assigned amount was erroneous.

14. Anna Weissman was not engaged in an unincorporated business during the years at issue herein.

#### CONCLUSIONS OF LAW

A. That the total available cash for each year at issue should properly be computed as follows:

	<u>1977</u>	<u>1978</u>	<u>1979</u>
Gross Income	\$21,040.00	\$22,560.00	\$20,290.00
Money returned to petitioner by Mr. Katz	14,973.54	3,274.68	5,600.00
Total available cash	<u>\$36,013.54</u>	<u>\$25,834.68</u>	<u>\$25,890.00</u>

B. That the total available cash for 1978 and 1979 was overstated in the cash availability analysis. As such, the adjustments for "additional income" and the deficiencies arising therefrom were understated. The total available cash for 1977 was understated by \$562.54 and the deficiencies arising therefrom were overstated.

C. That section 689(d)(1) of the Tax Law provides that:

"If a taxpayer files with the tax commission a petition for redetermination of a deficiency, the tax commission shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section six hundred eighty-five, if claim therefor is asserted at or before the hearing."

Section 722(a) of the Tax Law incorporates section 689(d)(1) into Article 23 for unincorporated business tax purposes.



Section T46-189.0(d)(1) of the Administrative Code of the City of New York is virtually identical to section 689(d)(1) of the Tax Law.

D. That since the Audit Division made no claim for assertion of a greater deficiency based on the overstatement of total available cash for 1978 and 1979, the State Tax Commission cannot determine a greater deficiency within the meaning and intent of sections 689(d)(1) and 722(a) of the Tax Law and section T46-189.0(d)(1) of the Administrative Code of the City of New York.

E. That the credit due petitioner based on the mathematical error made in computing the cash availability analysis for 1978 (see Finding of Fact "7", supra) is offset by the erroneous understatement of the "additional income" adjustment made for said year.

F. That the Audit Division is directed to recompute the personal income tax and unincorporated business tax deficiencies for 1977 using the correct available cash amount of \$36,013.54 as noted in Conclusion of Law "A", supra.

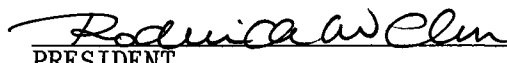
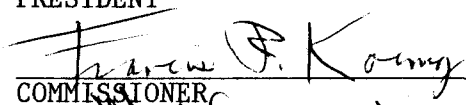
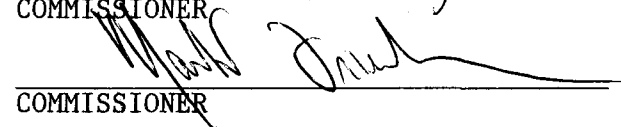
G. That petitioner Anna Weissman's name is to be removed from Notice of Deficiency "d" (Finding of Fact "3", supra) since she was not engaged in an unincorporated business during the years at issue herein.

H. That except as provided in Conclusions of Law "F" and "G", supra, the petition of Joseph Weissman and Anna Weissman (deceased) is denied and the four (4) notices of deficiency issued January 22, 1982 and March 30, 1982 are sustained, together with the negligence penalty and such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 09 1984

  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER