

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Peter Yu :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of New York State and New York City Personal Income :
Taxes and Unincorporated Business Tax under :
Articles 22 and 23 of the Tax Law and Chapter 46, :
Title T of the Administrative Code of the City of :
New York for the Years 1977 and 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 31st day of December, 1984, he served the within notice of Decision by certified mail upon Peter Yu, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter Yu
34 Ludlow St. #10
New York, NY 10002

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

Michael 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 :
Peter Yu :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of New York State and New York City Personal Income :
Taxes and Unincorporated Business Tax under :
Articles 22 and 23 of the Tax Law and Chapter 46, :
Title T of the Administrative Code of the City of :
New York for the Years 1977 and 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 31st day of December, 1984, he served the within notice of Decision by certified mail upon Meyer Goldman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Meyer Goldman
Goldman & Goldman
579 Ninth Avenue
New York, NY 10036

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

Peter Yu
34 Ludlow St. #10
New York, NY 10002

Dear Mr. Yu:

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
579 Ninth Avenue
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---------------------------------------------|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| PETER YU | : | DECISION |
| for Redetermination of a Deficiency or for | : | |
| Refund of New York State and New York City | : | |
| Personal Income Taxes and Unincorporated | : | |
| Business Tax under Articles 22 and 23 of | : | |
| the Tax Law and Chapter 46, Title T of the | : | |
| Administrative Code of the City of New York | : | |
| for the Years 1977 and 1978. | : | |

Petitioner, Peter Yu, 34 Ludlow Street, #10, New York, New York 10002, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes and unincorporated business tax under Articles 22 and 23 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1977 and 1978 (File Nos. 34300 and 34301).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 27, 1984 at 9:50 A.M., with all briefs to be submitted by August 3, 1984. Petitioner appeared by Goldman & Goldman (Meyer Goldman, CPA). The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether, for New York State and New York City personal income tax purposes and for unincorporated business tax purposes, petitioner realized additional, unreported income in 1977 and 1978 in the respective amounts of \$45,484.00 and \$42,501.20.

FINDINGS OF FACT

1. Petitioner, Peter Yu, is a taxicab driver who owns his own taxicab and medallion. For taxable years 1977 and 1978, petitioner filed New York State income tax resident returns (with New York City personal income tax), submitted with each of which was a federal schedule C, Profit or (Loss) from Business or Profession. These schedules reported income from and expenses of his taxicab business as follows:

| | 1977 <u>2/6 - 12/31</u> | 1978 |
|----------------------|----------------------------|-----------------|
| Income from bookings | \$13,116 | \$15,226 |
| Tips | <u>2,361</u> | <u>2,452</u> |
| Total income | \$15,477 | \$17,678 |
| Expenses | <u>(11,767)</u> | <u>(12,541)</u> |
| Net profit | \$ 3,710 | \$ 5,137 |

2. On March 25, 1981, the Audit Division issued to petitioner a Notice of Deficiency, asserting additional New York State personal income tax due under Article 22 of the Tax Law and additional New York City personal income tax due under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1977 and 1978 in the combined amount of \$13,601.41, plus interest. A Statement of Personal Income Tax Audit Changes, previously issued to petitioner on December 30, 1980, explained that the adjustments to his tax liability were premised upon an audit which allegedly disclosed additional, unreported business income. The computation of the adjustments is set forth below.

| | 1977 | 1978 |
|-----------------------------------------------------|-------------------|-------------------|
| Unreported business income | \$45,484.00 | \$48,564.00 |
| Additional standard deduction | <u>(1,000.00)</u> | <u>(1,000.00)</u> |
| Net adjustment | \$44,484.00 | \$47,564.00 |
| Taxable income previously stated | <u>2,060.00</u> | <u>3,087.20</u> |
| Corrected taxable income | \$46,544.00 | \$50,651.20 |
| | | |
| NYS personal income tax on corrected taxable income | \$ 5,291.60 | \$ 5,078.12 |
| NYC personal income tax on corrected taxable income | <u>1,601.39</u> | <u>1,778.00</u> |
| Corrected tax due | \$ 6,892.99 | \$ 6,856.12 |
| Tax previously computed | <u>(75.64)</u> | <u>(72.06)</u> |
| Additional tax due | \$ 6,817.35 | \$ 6,784.06 |

On March 25, 1981, the Audit Division issued to petitioner a Notice of Deficiency, asserting unincorporated business tax due under Article 23 of the Tax Law for the years 1977 and 1978 in the combined amount of \$4,340.73, plus interest. A Statement of Unincorporated Business Tax Audit Changes, previously issued to petitioner on December 30, 1980, indicated that the adjustments were similarly founded on allegedly unreported business income for the years at issue.

3. The deficiencies at issue were estimated from odometer readings reflected in repair bills, by reason of petitioner's failure to produce complete trip tickets for the Audit Division's examination.

(a) 1978 Bills for repairs performed by B.E.M. Auto Transmission Corp. indicated that during the period May 4 through December 19, 1978, petitioner's taxicab was driven 47,880 miles. The mileage was annualized and then used to compute the alleged understatement of income as shown below.

| | |
|------------------------------------------|-----------------|
| Annualized mileage | 76,608 |
| Less: 25% for cruising and personal use | (19,152) |
| Business miles | <u>57,456</u> |
| Gross receipts at \$1/mile | \$57,456 |
| Gross receipts reported (excluding tips) | (15,226) |
| Understatement of gross receipts | <u>\$42,230</u> |
| Understatement of tips, at 15% | 6,334 |
| Understatement of income | <u>\$48,564</u> |

(b) 1977 The tax examiner again utilized the mileage from the 1978 repair bills to project total miles driven during the 11 months the taxicab was in operation in 1977.

| | |
|------------------------------------------|-----------------|
| Total mileage | |
| 76,608 X 11/12 | 70,224 |
| Less: 25% for cruising and personal use | (17,556) |
| Business miles | <u>52,668</u> |
| Gross receipts at \$1/mile | \$52,668 |
| Gross receipts reported (excluding tips) | (13,116) |
| Understatement of gross receipts | <u>\$39,552</u> |
| Understatement of tips, at 15% | 5,932 |
| Understatement of income | <u>\$45,484</u> |

4. At a pre-hearing conference held, petitioner asserted and established that his brother, Alfred Yu, drove the taxicab during 1978 and realized income therefrom in the amount of \$6,062.80. The Audit Division reduced the deficiencies accordingly: the New York State and New York City personal income taxes now at issue are \$12,613.20, and the unincorporated business tax liability at issue is \$4,037.58.

5. During the years under consideration, petitioner received the use of a two-way radio through his paid membership in XYZ Two Way Taxi Radio Assn., Inc. All his fares were generated by radio requests to pick up passengers at particular locations and transport them to their destinations. Petitioner (like other drivers of radio-operated taxicabs) remained at a self-appointed central location in Manhattan, awaiting radio calls. Upon receipt of a call, petitioner proceeded to the passenger's location; after discharging the passenger, petitioner returned, most often without a passenger, to his "station" to await the next call. Petitioner maintains that because of his method of operation, he should have been permitted 50 percent "cruising", or empty, miles.

6. Petitioner received tips, in the form of a surcharge of approximately \$2.50 to \$3.00 imposed on each fare.

7. Petitioner offered in evidence a letter from the treasurer of XYZ Taxi, Inc. wherein it was stated that one Randy Liu operated petitioner's taxicab during 1977 and 1978 and received earnings therefrom in the amounts of \$9,500.00 and \$3,070.00, respectively.

8. The Internal Revenue Service conducted an examination of petitioner's 1978 federal income tax return, most particularly the expenses claimed on schedule C. Certain expenses were disallowed, resulting in tax due of \$173.59.

CONCLUSIONS OF LAW

A. That petitioner established, by the introduction of credible testimony regarding his business practices, that after discharging a passenger, he most often returned to his selected station without a passenger. Therefore, in addition to a 10 percent reduction in total mileage for his personal use of the taxicab, he should be permitted a further reduction of 40 percent for mileage driven without passengers.

B. That petitioner failed to establish that the asserted deficiencies are erroneous or improper in any other respect. The Commission can predicate no finding of fact solely on a statement in a letter that another individual operated petitioner's taxicab during 1977 and 1978. See Matter of Yankee Accessory Corp., State Tax Comm., April 22, 1983. Further, no modification of the deficiencies is necessary to take account of the surcharges, since the surcharges appear to equal, or perhaps even exceed, tips as calculated by the Audit Division.

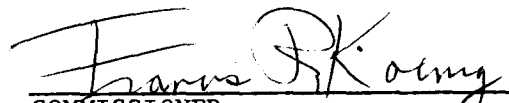
C. That the petition of Peter Yu is granted to the extent indicated in Conclusion of Law "A", and the notices of deficiency, issued on March 25, 1981 and decreased as stated in Finding of Fact "4", are to be modified accordingly.

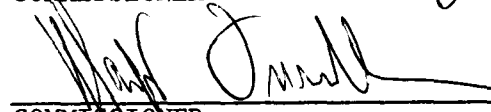
DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER