

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Crescenzo Buonafede

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of NYS Personal Income Tax under Article 22 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. :

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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Crescenzo Buonafede, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

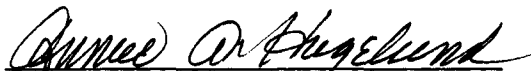
Crescenzo Buonafede
16 Royal Street
Yonkers, NY

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
6th day of February, 1985.





Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Crescenzo Buonafede

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of NYS Personal Income Tax under Article 22 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. :

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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Richard J. DioGuardi, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

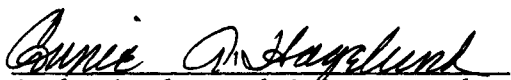
Richard J. DioGuardi
DioGuardi, Eletto & Co.
111 No. Central Park Ave., Suite 435
Hartsdale, NY 10530

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
6th day of February, 1985.




Annie M. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Crescenzo Buonafede
16 Royal Street
Yonkers, NY

Dear Mr. Buonafede:

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 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
Richard J. DioGuardi
DioGuardi, Eletto & Co.
111 No. Central Park Ave., Suite 435
Hartsdale, NY 10530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CRESCENZO BUONAFEDE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 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.	:	

Petitioner, Crescenzo Buonafede, 16 Royal Street, Yonkers, New York, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 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 No. 30415).

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 June 13, 1984 at 10:45 A.M. Petitioner appeared by Richard J. DioGuardi, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether an adjustment attributing additional income to petitioner as the result of an audit of his unincorporated business, Joe G's Auto Parts, was proper.

FINDINGS OF FACT

1. Crescenzo Buonafede (hereinafter "petitioner"), filed a New York State Income Tax Resident Return (with New York City Personal Income Tax) for the year 1977 whereon he reported a business loss of \$1,989.82 derived from his

unincorporated business, Joe G's Auto Parts, 1079B Yonkers Avenue, Yonkers, New York. In conjunction therewith, he filed a 1977 New York State Unincorporated Business Tax Return whereon said loss was reported.

2. On December 3, 1979, the Audit Division issued a Statement of Personal Income Tax Audit Changes to petitioner for the years 1975, 1976 and 1977 wherein, as the result of a field audit, the following adjustments were made:

<u>Adjustment</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>
Disallowed Rental Loss	\$ 4,161.00	\$ 3,196.39	\$ -0-
Partnership Income Increased Pursuant to Audit of School Street Auto Parts	21,489.00	66,333.25	7,485.25
Capital Gain - B & C Parking Lot		792.00	824.22
N.Y.S. Modification for Capital Gain		158.00	164.84
Additional Standard Deduction		(687.27)	
Disallowed Business Loss - Joe G's Auto Parts			1,989.82
Corrected Profit Joe G's Auto Parts			12,315.48
Adjustment to Rental Income & Expense			5,013.00
Net Adjustment	<u>\$25,650.00</u>	<u>\$69,792.77</u>	<u>\$27,792.61</u>

3. On December 3, 1979, the Audit Division also issued a Statement of Unincorporated Business Tax Audit Changes to petitioner for the year 1977 wherein the aforestated corrected profit of Joe G's Auto Parts of \$12,315.48 was held subject to unincorporated business tax. On December 18, 1979 petitioner signed the Consent to Findings portion of said statement and paid the unincorporated business tax determined to be due of \$196.10, plus penalties and interest of \$90.99, for a total payment of \$287.09.

4. On March 3, 1980, the Audit Division issued two (2) notices of deficiency against petitioner. One such notice, which was issued solely for the year 1977, asserted additional New York City personal income tax of \$1,137.57, New York State unincorporated business tax of \$196.10, plus penalties¹ and interest of

¹ The penalties asserted on this Notice of Deficiency were asserted solely with respect to the unincorporated business tax deficiency of \$196.10.

\$277.04, for a total of \$1,610.71. The other Notice of Deficiency asserted additional New York State personal income tax for 1975, 1976 and 1977 and additional New York City personal income tax for 1976 totaling \$20,444.33, plus interest of \$5,002.61, for an amount due of \$25,446.94. Said amount due was then reduced by \$287.09, which represents the previous payment made with respect to the 1977 unincorporated business tax, to yield a balance due of \$25,159.85.

5. On December 15, 1982, petitioner signed and submitted a Withdrawal of Petition and Discontinuance of Case form for the years 1975 and 1976. Accordingly, only taxable year 1977 remains at issue herein.

6. As the result of a pre-hearing conference, the 1977 adjustment for "partnership income increased pursuant to audit of School Street Auto Parts" was increased from \$7,485.25 to \$15,982.00. The balance of adjustments for 1977, as scheduled on the Statement of Personal Income Tax Audit Changes, remained unchanged.

7. On September 27, 1982 petitioner signed and submitted two (2) Partial Withdrawal of Petition and Discontinuance of Case forms for 1977. One such partial withdrawal indicated, with respect to New York State personal income tax, an agreed amount of \$3,407.23 and a disagreed amount of \$1,813.18. The second partial withdrawal indicated an agreed amount of unincorporated business tax of \$196.10, which had previously been paid, an agreed amount of New York City personal income tax of \$983.15, and a disagreed amount of New York City personal income tax of \$519.78. The tax amounts as stated on said partial withdrawals were based on a recomputation resulting from the change made at the pre-hearing conference (see Finding of Fact "6", supra).

8. The disagreed tax amounts, as listed on the aforestated two (2) partial withdrawals, are solely with respect to the 1977 adjustments for "disallowed business loss - Joe G's Auto Parts" of \$1,989.82 and "corrected profit - Joe G's Auto Parts" of \$12,315.48. All other adjustments for 1977, including the increased adjustment for partnership income of School Street Auto Parts, were agreed to by petitioner at the pre-hearing conference.

9. During the audit of Joe G's Auto Parts it was discovered that the gross receipts and purchases, as reported on the 1977 Federal Schedule C, erroneously included amounts for taxable year 1976. Accordingly, such 1976 gross receipts and purchases were removed. Ending inventory, which was reported as \$22,000.00, was accepted on audit.

10. Petitioner's sole argument in this matter is that he believes the ending inventory of \$22,000.00, which was the amount reported on the return and accepted on audit, was overstated, and as such, the net profit of Joe G's Auto Parts, as determined by the Audit Division, also was overstated.

11. Petitioner's representative attempted to show that the ending inventory was overstated based on a markup test on purchases. Pursuant to his test, he claimed that the ending inventory should properly be \$8,562.05 rather than \$22,000.00 as reported. No documentation was submitted in support of the markup test computations submitted. No records were submitted to show that a physical inventory was taken at the end of 1977.

CONCLUSIONS OF LAW

A. That pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of The City of New York, the burden of proof shall be upon the petitioner in any case before the tax commission, except for certain issues, none of which are present in the instant case.

B. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of The City of New York, to show that the ending inventory of \$22,000.00 attributed to Joe G's Auto Parts for the year 1977 was erroneous. The fact that said amount was reported on petitioner's return as the ending inventory, coupled with the fact that petitioner had agreed to the correctness of the net profit of \$12,315.48 for Joe G's Auto Parts for unincorporated business tax purposes, leads to the conclusion that said net profit and the ending inventory of \$22,000.00 used in computing said net profit, are correct.

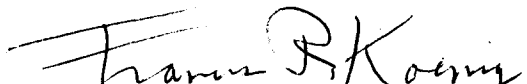
C. That the petition of Crescenzo Buonafede is denied and the two (2) notices of deficiency issued March 3, 1980 as modified by the withdrawal of petition forms (Findings of Fact "5", "6" and "7") are sustained, together with such additional interest as may lawfully be owing.

DATED: Albany, New York

FEB 06 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER