

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leon & Sally Teuch :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income & :
Unincorporated Business Taxes under Articles 22 & :
23 of the Tax Law for the Years 1977, 1978 & 1979. :
:

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 16th day of July, 1985, he served the within notice of Decision by certified mail upon Leon & Sally Teuch, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leon & Sally Teuch
145 24-11 Avenue
Whitestone, NY 11357

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
16th day of July, 1985.

David Parchuck

Annita P. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leon & Sally Teuch :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income & :
Unincorporated Business Taxes under Articles 22 & :
23 of the Tax Law for the Years 1977, 1978 & 1979. :
:

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 16th day of July, 1985, 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
579 Ninth Avenue
New York, NY 11357

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
16th day of July, 1985.

David Parchuck

Conrad A. Hagelland
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 16, 1985

Leon & Sally Teuch
145 24-11 Avenue
Whitestone, NY 11357

Dear Mr. & Mrs. Teuch:

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 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
Meyer Goldman
Goldman & Goldman
579 Ninth Avenue
New York, NY 11357
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEON AND SALLY TEUCH	:	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, 1978 and 1979.	:	

Petitioners, Leon and Sally Teuch, 145 24-11 Avenue, Whitestone, New York 11357, 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, 1978 and 1979 (File Nos. 37324, 37421, 37422 and 37423).

A hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 6, 1985 at 1:15 P.M. Petitioners appeared by Goldman & Goldman (Meyer Goldman, CPA). The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUES

I. Whether for New York State and New York City personal income tax purposes and for unincorporated business tax purposes, petitioners realized additional, unreported income in 1977, 1978 and 1979 in the respective amounts of \$5,570.00, \$5,172.00 and \$5,575.00.

II. Whether the Audit Division properly reduced petitioners' basis in a New York City taxicab medallion, concomitantly increasing the capital gain they realized upon the sale of an interest in the medallion.

FINDINGS OF FACT

1. For the taxable year 1977, petitioners, Leon and Sally Teuch, filed a New York State Income Tax Resident Return with New York City personal income tax. Mr. Teuch did not file an unincorporated business income tax return for his taxi service business, which he operated as a sole proprietorship.

For 1978, petitioners filed a New York State Income Tax Resident Return with New York City personal income tax and a Minimum Income Tax Computation Schedule. For personal income tax and minimum income tax purposes, petitioners reported a long-term capital gain in the amount of \$11,850.00; such gain represented the excess of the selling price (\$27,500.00) over the cost basis (\$15,650.00) of a one-half interest in a New York City taxicab medallion. Again, Mr. Teuch failed to file any unincorporated business tax return.

For 1979, petitioners filed a New York State Income Tax Resident Return with New York City personal income tax, a Minimum Income Tax Computation Schedule, a Maximum Tax on Personal Service Income computation, a Claim for Real Property Tax Credit and a Claim for Energy Assistance Credit. No unincorporated business tax return was submitted.

2. On April 7, 1982, subsequent to the conduct of a field examination of petitioners' personal and business records, the Audit Division issued to petitioners four notices of deficiency, asserting New York State personal income tax under Tax Law Article 22, New York City personal income tax under Administrative Code Chapter 46, Title T, and unincorporated business tax under

Tax Law Article 23, plus negligence penalties and interest, for the years 1977, 1978 and 1979 scheduled as shown below.

	<u>1977</u>	<u>1978</u>	<u>1979</u>
NYS personal income tax	\$457.42	\$2,560.18	\$2,993.44
NYS minimum tax	--	96.31	--
NYC personal income tax	186.65	793.28	965.72
NYC minimum tax	--	40.13	--
Unincorporated business tax	<u>271.23</u>	<u>1,550.95</u>	<u>1,053.09</u>
	\$915.30	\$5,040.85	\$5,012.25

On February 6, 1981, petitioners had executed a consent extending the period of limitations for assessment of personal income and unincorporated business taxes for the year 1977 up to and including April 15, 1982.

3. The above-described deficiencies arose by reason of two major adjustments:

(a) additional income realized by petitioners in 1977, 1978 and 1979 and unreported for personal income and unincorporated business tax purposes; and

(b) an increase to the capital gain petitioners realized on the disposition of an interest in the taxicab medallion.

Mr. Teuch's taxicab service business employed the cash method of accounting and did not maintain a set of books. Therefore, in order to verify petitioners' taxable income as reported, the income tax examiner performed cash availability analyses, reviewing petitioners' checking and savings accounts documentation (including passbooks, bank statements and cancelled checks) and records of loans obtained and repaid. A summary of the examiner's analyses is set forth below.

	<u>1977</u>	<u>1978</u>	<u>1979</u>
Cash in			
Gross receipts, taxicab business	\$ 8,148	\$ 7,416	\$ 8,730
Social Security payments	3,554	4,305	4,015
Loans			38,550
Redemption certificate			10,492
Interest certificate			2,000

Transfer from savings account to certificate			10,000
Sale ½ taxicab medallion		27,500	
Dividend withdrawal	<u>140</u>	<u>327</u>	<u>367</u>
Total available	\$11,842	\$39,548	\$74,154*
<u>Cash out</u>			
Deposits to checking	\$ 5,755	\$ 5,983	\$ 6,989
Loan repayments	3,431		36,269
Deposits to savings		31,000	15,800
Repurchase of medallion			32,000
Purchase of taxicabs		3,358	2,379
Business expenses paid in cash	<u>3,366</u>	<u>5,394</u>	<u>5,455</u>
Total cash out	\$12,552	\$45,735	\$98,892*
Total cash available	\$11,842	\$39,548	\$74,154
Total cash out	(12,552)	(45,735)	(98,892)
Estimated cash living expenses	<u>(10,000)</u>	<u>(10,000)</u>	<u>(10,000)</u>
Understatement of income	<u>\$10,710</u>	<u>\$16,187</u>	<u>\$34,738*</u>

* Arithmetical errors corrected.

The examiner estimated petitioners' cash living expenses by reference to figures compiled by the Greater Business Council of New York City.

It was the examiner's opinion that petitioners had overstated the basis of the medallion in calculating their capital gain, and petitioners were unable to produce any purchase documents to substantiate their claimed cost of \$31,300.00. The examiner telephoned the New York City Taxicab and Limousine Commission which agency is currently charged with the responsibility of maintaining records for taxis and limousines; the Commission did not maintain such records during the 1950's, but a representative estimated that the cost of a full medallion in 1958, the year Mr. Teuch purchased his medallion, was approximately \$7,500.00. The examiner also referred to a federal Schedule D, Capital Gains and Losses, filed by another taxpayer who reported the cost of his New York City taxicab medallion purchased in 1954 as \$9,300.00. Based upon these

sources of information, the examiner decreased petitioners' basis in a one-half interest of the medallion to \$4,000.00, concomitantly increasing their capital gain to \$23,500.00.

4. After the issuance of the notices of deficiency, the income tax examiner met with Mr. Teuch and his representative, Mr. Goldstein. In accordance with further information furnished, the examiner allowed petitioners additional sources of cash and reduced her estimate of cash living expenses, which changes resulted in reductions to petitioners' alleged understatements of income.

	<u>1977</u>	<u>1978</u>	<u>1979</u>
Shortage per audit	\$10,710	\$16,187	\$34,738*
Additional expenditures (sources) of cash	140	(6,015)	(25,367)
Reduction to cash living expenses	<u>(5,000)</u>	<u>(5,000)</u>	<u>(3,796)</u>
Understatement of income	<u>\$ 5,570</u>	<u>\$ 5,172</u>	<u>5,575*</u>

* Arithmetical errors corrected.

5. Petitioners maintained a joint savings account at the UTOG Federal Credit Union in New York City. On August 6, 1976, Mr. Teuch withdrew therefrom the sum of \$4,000.00 in cash because he feared that his wife, who had been suffering from severe emotional problems, would withdraw and squander the funds. Mr. Teuch kept the money in the apartment and used it to meet petitioners' personal expenses; whether the entire sum was exhausted during 1976, or some portion was available and applied to personal expenditures in 1977 (or any other subsequent year) is unknown.

Mr. Teuch also maintained an account, solely in his name, at the Progressive Credit Union. On July 6, 1979, he withdrew therefrom \$550.00; such withdrawal was not considered by the income tax examiner in her analyses and serves to decrease the shortage asserted for 1979.

6. During his testimony, Mr. Teuch could not recollect the purchase price he paid for the taxicab medallion: "I did pay around 25 or 28 thousand dollars. I don't remember exactly." To buttress the cost basis claimed, petitioners offered in evidence two letters: one written by Oscar Katz, an attorney and an insurance broker for taxicab service businesses, and the other by Michael H. Roth, an attorney associated with the taxicab industry for over forty years. Mr. Katz's letter states, in relevant part:

"In reference to your request that I give you my opinion as to the average value of a medallion during the year 1958, I wish to advise you that to the best of my recollection, the value fluctuated between \$24,000 and \$26,000."

Mr. Roth's letter states:

"This office has been involved since 1950 in the sale and transfer of New York City Taxicab Medallions. During this period of 1950 to 1958, the office became familiar with values of taxi medallions which varied from year to year. During 1958 the value of medallions issued to individual owners was within the range of \$25,000 to \$28,000. The said variance was seasonal and depended upon such factors as availability of medallions, financing cost and the investment made by the medallion applicant."

CONCLUSIONS OF LAW

A. That the Tax Law and the New York City Administrative Code place the burden of proof upon petitioners to establish their position, including any allegations of error in the asserted deficiencies, by a preponderance of the evidence. (Tax Law sections 689[e] and 722; Administrative Code section T46-189.0[e].) Petitioners demonstrated that the examiner did not take cognizance of Mr. Teuch's withdrawal of \$550.00 from his Progressive Credit Union account on July 6, 1979; the shortage and understatement of income for 1979 should accordingly be reduced by such amount. Petitioners failed to prove any other errors in the cash availability analyses.

B. That the two letters submitted in evidence by petitioners, taken together with the somewhat vague testimony of Mr. Teuch, are insufficient to support petitioners' claimed basis in the taxicab medallion of \$31,300.00. The Audit Division thus correctly calculated petitioners' long-term capital gain on the sale of an interest in the medallion.


C. That the petition of Leon and Sally Teuch is granted to the extent indicated in Finding of Fact "4" and Conclusion of Law "A"; the notices of deficiency issued against them on April 7, 1982 are to be modified accordingly; and except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 16 1985


PRESIDENT


COMMISSIONER


COMMISSIONER