

Unincorp. Bus. Tax
BUREAU OF LAW
MEMORANDUM

Determinations A-2
Swezey Fuel Co.

TO: Commissioners Murphy, Macduff and Conlon

FROM: Vincent P. Molineaux, Hearing Officer

**SUBJECT: Elizabeth G. Swezey, Nathaniel Swezey,
 Frank A. Fuhrmann and Mildred Fuhrmann
 d/b/a Swezey Fuel Co.**

**Application for revision or refund of
 unincorporated business tax for the
 years 1958 and 1959**

**Elizabeth G. Swezey
 Nathaniel Swezey
 Frank A. and Mildred Fuhrmann**

**Application for revision or refund of
 personal income tax under Article 16
 of the Tax Law for the year 1959**

See also:
Income Tax Determinations A-2
 ① Swezey, Eliza G.
 ② Swezey, Nathaniel
 ③ Fuhrmann, Frank A.
 & Mildred
 (all dated 4/12/67)

A hearing on the above matter was scheduled before me at 60 Centre Street, New York, New York for December 9, 1966. The taxpayers failed to appear and since the taxpayers had previously indicated that they considered the amount involved too small to justify their appearance, the matter has been reviewed on the basis of the documents found in the file.

The issue herein involves the method of computing the allowance for depreciation. The taxpayers were doing business as a co-partnership under the name Swezey Fuel Co. and owned 14 vehicles. On the New York State unincorporated business tax return for the years 1958 and 1959 the co-partnership used the declining balance method of computing depreciation in the sum of \$2,628.57 on one of the vehicles for 1958 and \$9,128.61 on three of the vehicles for 1959. The Income Tax Bureau determined that the declining balance method was not reasonable and was excessive to the extent of \$2,461.91 for 1958 and \$6,515.76 for 1959. As a result thereof additional assessments were made against the partnership in the amounts of \$98.48 for the year 1958 and \$260.06 for 1959.

Additional assessments were issued against Elizabeth G. Swezey and Nathaniel Swezey and against Frank A. Fuhrmann and Mildred Fuhrmann based upon their distributive shares for the year 1959.

BUREAU OF LAW
MEMORANDUM

(5-67)

TO:

FROM:

SUBJECT:

1. [Illegible handwritten text]

2. [Illegible handwritten text]

Depreciation for the years prior to 1960 is controlled by subdivision 6 of section 360 of the Tax Law and Articles 175 and 179 of the Income Tax Regulations.

Although the declining balance and the sum-of-the-digits methods are allowable for Federal tax purposes under the Internal Revenue Code of 1954, neither of these accelerated methods is allowable under New York State Income Tax Law prior to 1960 on the ground that these accelerated methods are not in accordance with "recognized trade practice" (Manual of Policy, Article 175, 8/25/58).

The United States Tax Court in interpreting the Federal Tax Statute similar to section 360(6) of the Tax Law (prior to the enactment of the Internal Revenue Code of 1954), in the case of Turbin v. Commissioner of Internal Revenue, 16 T. C. 118, held that the taxpayer was not entitled to accelerated depreciation and that the Commissioner correctly permitted a deduction for straight-line depreciation only.

On the basis of the foregoing, I am of the opinion that the assessments should be sustained and I recommend that the taxpayers' applications for revision or refund be denied in substantially the form submitted herewith.

/s/

VINCENT P. MOLINEAUX

Hearing Officer

VPM:pg 3-30-67
Enc.
March 23, 1967

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE APPLICATION

OF

**ELIZABETH G. SWEENEY,
NATHANIEL SWEENEY,
FRANK A. FURDMAN AND
MILORAD FURDMAN**

**INDIVIDUALLY AND AS CO-PARTNERS D/B/V
THE FIRM NAME AND STYLE OF SWEENEY FUEL
CO. FOR REVISION OR REFUND OF UNINCORPOR-
ATED BUSINESS TAX UNDER ARTICLE 16-A OF
THE TAX LAW FOR THE YEARS 1958 AND 1959**

The petitioners having filed applications for re-
vision or refund of taxes assessed under Article 16-A of the
Tax Law for the years 1958 and 1959 and a hearing having been
scheduled for December 2, 1966 at 9:00 a.m. and the taxpayers
having failed to appear and the matter having been duly ex-
amined and considered,

The State Tax Commission hereby finds:

(1) That petitioners filed unincorporated business
tax returns for the years 1958 and 1959 on which depreciation
on a declining balance method was claimed.

(2) That assessments Nos. B828307 and B828308 for
the years 1958 and 1959 were issued January 5, 1961 on which
depreciation claimed was partially disallowed.

(3) That the petitioners have offered no justifi-
cation in support of their claim for additional depreciation.

Upon the foregoing evidence the State Tax Commission
hereby

DETERMINES:

(A) That the partial disallowance of depreciation

was correct under section 175 of the income tax regulations.

(B) That the petition for refund is hereby denied.

Dated: Albany, New York this 12th day of April, 1967

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

COMMISSIONER

/s/

WALTER MACLYN CONLON

COMMISSIONER