

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Michael A. Maria, Sr. & Michael A. Maria, Jr. :
d/b/a Maria & Maria : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Unincorporated :
Business Tax under Article 23 of the Tax Law for :
the Years Ending 10/31/74 & 10/31/75.

State of New York
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Michael A. Maria, Sr. & Michael A. Maria, Jr., d/b/a Maria & Maria the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael A. Maria, Sr. & Michael A. Maria, Jr.
d/b/a Maria & Maria
769 Main St.
New Rochelle, NY 10805

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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
24th day of January, 1983.

Kathy Pfaffenbach

Janice C. Agelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
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Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Joseph A. Maria the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph A. Maria
Maria & Libertella
One Water Street
White Plains, NY 10601

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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
24th day of January, 1983.

Kathy Pfaffenbach

Annice A. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

January 24, 1983

Michael A. Maria, Sr. & Michael A. Maria, Jr.
d/b/a Maria & Maria
769 Main St.
New Rochelle, NY 10805

Dear Sirs:

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) 722 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph A. Maria
Maria & Libertella
One Water Street
White Plains, NY 10601
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Michael A. Maria, Jr. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Years :
1974 & 1975.

State of New York
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Michael A. Maria, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael A. Maria, Jr.
48 Westwood Ave.
New Rochelle, NY 10801

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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
24th day of January, 1983.

Kathy Pfaffenbach

Ann A. Heyland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Michael A. Maria, Jr.

:

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Joseph A. Maria
Maria Libertella
One Water St.
White Plains, NY 10601

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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24th day of January, 1983.

Kathy Pfaffenbach

Annice A. Hayward

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

January 24, 1983

Michael A. Maria, Jr.
48 Westwood Ave.
New Rochelle, NY 10801

Dear Mr. Maria:

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 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph A. Maria
Maria Libertella
One Water St.
White Plains, NY 10601
Taxing Bureau's Representative

STATE OF NEW YORK

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In the Matter of the Petition :
of :
Michael A. Maria, Sr. : AFFIDAVIT OF MAILING
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Michael A. Maria, Sr.
82 Linden Ave.
Pelham, NY 10803

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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24th day of January, 1983.

Kathy Pfaffenbach

Annmarie O'Haghen

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Michael A. Maria, Sr.

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Tax under Article 22 of the Tax Law for the Years :
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State of New York
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Joseph A. Maria
Maria & Libertella
One Walter St.
White Plains, NY 10601

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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Kathy Pfaffenbach

James R. Haglund

AUTHORIZED TO ADMINISTER
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SECTION 174

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

January 24, 1983

Michael A. Maria, Sr.
82 Linden Ave.
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Dear Mr. Maria:

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Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph A. Maria
Maria & Libertella
One Walter St.
White Plains, NY 10601
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MICHAEL A. MARIA, SR. and MICHAEL A. MARIA, JR. :
d/b/a MARIA & MARIA :
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years 1974 :
and 1975. :

In the Matter of the Petition :
of :
MICHAEL A. MARIA, SR. : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1974 and 1975. :

In the Matter of the Petition :
of :
MICHAEL A. MARIA, JR. :
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1974 and 1975. :

Petitioners, Michael A. Maria, Sr. and Michael A. Maria, Jr., d/b/a
Maria & Maria, 769 Main Street, New Rochelle, New York 10805, Michael A. Maria,
Sr., 82 Linden Avenue, Pelham, New York 10803 and Michael A. Maria, Jr., 48
Westwood Avenue, New Rochelle, New York 10801, filed petitions for redetermina-
tion of deficiencies or for refunds of personal income and unincorporated
business taxes under Articles 22 and 23 of the Tax Law for the years 1974 and
1975 (File Nos. 25972, 25973 and 25974).

A consolidated 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 April 30, 1982 at 9:00 A.M. Petitioners appeared by Joseph A. Maria, Esq. The Audit Division appeared by Paul B. Coburn (Anna Colello, Esq., of counsel).

ISSUE

Whether certain adjustments made as the result of a field audit were proper.

FINDINGS OF FACT

1. Michael A. Maria, Sr. and Michael A. Maria, Jr., d/b/a Maria & Maria (hereinafter the partnership) filed a New York State Partnership Return for each of the fiscal years ended October 31, 1974 and October 31, 1975 whereon it reported the income derived and expenses incurred from its activities engaged in as a retail automobile parts dealer. Unincorporated business tax was computed and paid for both fiscal years at issue.

2. Michael A. Maria, Sr. and Michael A. Maria, Jr., partners in said partnership, each filed New York State combined income tax returns with their wives for the years 1974 and 1975 whereon they reported their respective distributive shares of partnership income.

3. On September 14, 1978, the Audit Division issued a Statement of Audit Changes to the partnership wherein, based on a field audit of the partnership as well as the individual partners, adjustments were made to the partnership returns for 1974 and 1975 attributing additional income to the partnership of \$14,411.07 and \$72,957.00, respectively. Additionally, adjustments were made to certain expense items claimed by the partnership. The additional income held attributable to the partnership was determined through a cash availability

analysis of each partner for each year at issue incorporating the source and application of funds method of income reconstruction.

4. On September 15, 1978, the Audit Division issued statements of audit changes to Michael A. Maria, Sr. and Michael A. Maria, Jr. wherein adjustments were made for their respective distributive shares of the total partnership adjustments for 1974 and 1975. Other adjustments made pursuant to schedules of audit adjustments attached thereto were uncontested by petitioners and accordingly are not at issue herein.

5. The following notices of deficiency were issued on February 7, 1979 with respect to the aforestated adjustments:

(a) Against the partnership -- asserting additional unincorporated business tax for 1975 of \$4,578.63, additional unincorporated business tax for 1974 of \$1,131.90, resulting from the disallowance of an unverified estimated tax payment claimed of said amount, plus penalty and interest of \$1,569.15, for a total due of \$7,279.68. Said penalty was issued pursuant to section 685(c) of the Tax Law for underpayment of estimated tax.

(b) Against Michael A. Maria, Sr. -- asserting additional personal income tax for 1974 and 1975 of \$8,191.34, plus penalty and interest of \$2,033.79, for a total due of \$10,225.13. Said penalty was issued pursuant to section 685(c) of the Tax Law.

(c) Against Michael A. Maria, Jr. -- asserting additional personal income tax for 1974 and 1975 of \$7,499.88, plus interest of \$1,832.34, for a total due of \$9,332.22.

6. For 1974, the partnership conceded all adjustments except the increase to income determined through the cash availability analysis. Additionally, it conceded that the claimed estimated tax payment of \$1,131.90 was never made. For 1975 it conceded all adjustments, except the increase to income and the adjustment to purchases of \$3,619.29. No evidence was submitted to show that the adjustment to purchases was erroneous or improper.

7. Petitioners Michael A. Maria, Sr. and Michael A. Maria, Jr. contended that they had accumulated money over the years which was continually rolled over into treasury bills and certificates of deposit. They claimed that the major portion of the cash shortages determined by the source and application of funds method represented money received on maturity of the treasury bills and certificates of deposit which were then deposited into their personal bank accounts. Petitioners attempted to substantiate this through submission of various receipts and other documents evidencing the continual purchase of treasury bills. Said documents were submitted "to show a history" of investing in treasury bills.

8. No new documentation was submitted with respect to Michael A. Maria, Sr. to show that the source of certain unexplained deposits was from redemption of treasury bills. Credit was previously allowed for certain rollovers on audit.

9. A Chemical Bank document was submitted with respect to Michael A. Maria, Jr. evidencing his holding of U.S. Treasury Bills of \$10,000.00, with a due date of October 22, 1975. This ties into a previously unexplained deposit of \$10,357.50 made on October 24, 1975 to his account at Eastchester Savings Bank. No other specifically relevant documentation was submitted.

CONCLUSIONS OF LAW

A. That petitioner Michael A. Maria, Jr. is to be given credit for an additional source of funds for 1975 of \$10,357.50 (Finding of Fact "9" supra). Accordingly, the increase in income adjustment to the partnership for 1975 is reduced by said amount and each partner's distributive share of the partnership adjustments for said year is to be reduced by one half of said amount.

B. That except as so provided in Conclusion of Law "A" supra, the adjustments made to the partnership returns of Michael A. Maria, Sr. and

Michael A. Maria, Jr., d/b/a Maria & Maria and the personal income tax returns of Michael A. Maria, Sr. and Michael A. Maria, Jr. are hereby sustained.

C. That the petitions of said petitioners are granted to the extent provided in Conclusion of Law "A" supra, and except as so granted, said petitions are, in all other respects, denied.

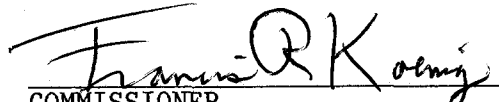
D. That the Audit Division is hereby directed to modify the three notices of deficiency dated February 7, 1979 to be consistent with the decision rendered herein.


DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER