

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of		
Precision Automotive	:	
		AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision	:	
of a Determination or Refund of Unincorporated		
Business Tax under Article 23 of the Tax Law for	:	
the Years 1979, 1980.		

State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he/she served the within notice of Decision by certified mail upon Precision Automotive, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Precision Automotive  
7 Brightside Avenue  
East Northport, NY 11731

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  
18th day of February, 1986.

Doris E. Steinhardt

John Conry  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Precision Automotive :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Unincorporated :  
Business Tax under Article 23 of the Tax Law for :  
the Years 1979, 1980. :  
:

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AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he served the within notice of Decision by certified mail upon Leon A. Kweit, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leon A. Kweit  
Leon A. Kweit & Company  
The 110 Colonial Building, 150 Broad Hollow Rd.  
Melville, NY 11747

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  
18th day of February, 1986.

Doris E. Steinhardt

Jan Cariglin  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 18, 1986

Precision Automotive  
7 Brightside Avenue  
East Northport, NY 11731

Gentlemen:

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  
Leon A. Kweit  
Leon A. Kweit & Company  
The 110 Colonial Building, 150 Broad Hollow Rd.  
Melville, NY 11747  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Matthew Holochuck & Joseph Mauceri :  
d/b/a Precision Automotive : AFFIDAVIT OF MAILING  
:  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax :  
under Article 28 & 29 of the Tax Law for the Period :  
12/1/79-11/30/80. :

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State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he/she served the within notice of Decision by certified mail upon Matthew Holochuck & Joseph Mauceri d/b/a Precision Automotive the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Matthew Holochuck & Joseph Mauceri  
d/b/a Precision Automotive  
7 Brightside Ave.  
East Northport, NY 11731

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  
18th day of February, 1986.

Doris E. Steinhardt

Stan Coughlin  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

February 18, 1986

Matthew Holochuck & Joseph Mauceri  
d/b/a Precision Automotive  
7 Brightside Ave.  
East Northport, NY 11731

Gentlemen:

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) 1138 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:

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Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Leon A. Kweit  
Leon A. Kweit & Company, P.C.  
150 Broad Hollow Rd., The 110 Colonial Bldg.  
Melville, NY 11747  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Matthew & Diane Holochuck :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Years :  
1979 & 1980. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he/she served the within notice of Decision by certified mail upon Matthew & Diane Holochuck, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Matthew & Diane Holochuck  
2 Alice Dr.  
Commack, NY 11725

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  
18th day of February, 1986.

Doris E. Steinhardt

Jean Coughlin  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Matthew & Diane Holochuck :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Years :  
1979 & 1980. :

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AFFIDAVIT OF MAILING

State of New York :  
ss.:  
County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he served the within notice of Decision by certified mail upon Leon A. Kweit, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leon A. Kweit  
150 Broad Hollow Road  
Melville, NY 11747

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.

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Sworn to before me this  
18th day of February, 1986.

Doris E. Steinhardt

Jean Coniglio  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

February 18, 1986

Matthew & Diane Holochuck  
2 Alice Dr.  
Commack, NY 11725

Dear Mr. & Mrs. Holochuck:

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, 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:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Leon A. Kweit  
150 Broad Hollow Road  
Melville, NY 11747  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Joseph & Diana Mauceri	:	
for Redetermination of a Deficiency or Revision	:	AFFIDAVIT OF MAILING
of a Determination or Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Years	:	
1979 & 1980.	:	

State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he/she served the within notice of Decision by certified mail upon Joseph & Diana Mauceri, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph & Diana Mauceri  
35 Rutledge Street  
Brentwood, NY 11717

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.

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18th day of February, 1986.

Doris E. Steinhardt

Jan C. [Signature]  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Joseph & Diana Mauceri :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Years :  
1979 & 1980. :  
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AFFIDAVIT OF MAILING

State of New York :  
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Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he served the within notice of Decision by certified mail upon Leon A. Kweit, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leon A. Kweit  
150 Broad Hollow Road  
Melville, NY 11747

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.

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18th day of February, 1986.

Doris E. Steinhardt

Jean Coniglio  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 18, 1986

Joseph & Diana Mauceri  
35 Rutledge Street  
Brentwood, NY 11717

Dear Mr. & Mrs. Mauceri:

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, 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:

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Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Leon A. Kweit  
150 Broad Hollow Road  
Melville, NY 11747  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
PRECISION AUTOMOTIVE  
for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Years 1979  
and 1980.

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In the Matter of the Petition  
of  
MATTHEW HOLOCHUCK AND JOSEPH MAUCERI  
D/B/A PRECISION AUTOMOTIVE  
for Revision of a Determination or for Refund  
of Sales and Use Taxes under Articles 28 and 29  
of the Tax Law for the Period December 1, 1979  
through November 30, 1980.

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DECISION

In the Matter of the Petition  
of  
MATTHEW HOLOCHUCK AND DIANE HOLOCHUCK  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Years 1979 and 1980.

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In the Matter of the Petition  
of  
JOSEPH MAUCERI AND DIANA MAUCERI  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Years 1979 and 1980.

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Petitioner, Precision Automotive, 7 Brightside Avenue, East Northport, New York 11731, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1979 and 1980 (File No. 50964).

Petitioners, Matthew Holochuck and Joseph Mauceri d/b/a Precision Automotive, 7 Brightside Avenue, East Northport, New York 11731, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1979 through November 30, 1980 (File No. 41736).

Petitioners, Matthew Holochuck and Diane Holochuck, 2 Alice Lane, Commack, New York 11725, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1979 and 1980 (File No. 48167).

Petitioners, Joseph Mauceri and Diana Mauceri, 35 Rutledge Street, Brentwood, New York 11717, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1979 and 1980 (File No. 48166).

A consolidated 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 September 12, 1985 at 1:15 P.M. Petitioners appeared by Leon A. Kweit. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

#### ISSUE

Whether adjustments made to the returns of the aforestated petitioners as the result of cash availability audits conducted on the individuals, as well as an audit conducted on the partnership, Precision Automotive, were proper.

FINDINGS OF FACT

1. During the years 1979 and 1980, petitioners, Matthew Holochuck and Joseph Mauceri, were equal partners in Precision Automotive, an automobile service and gasoline station located on Long Island, New York.

2. The Audit Division conducted a consolidated field audit of both the partnership's and the individual partners' books and records for the years 1979 and 1980. As a result thereof, the following statements of audit changes were issued on December 28, 1982:

a) to Matthew and Diana Holochuck incorporating the following adjustments:

	<u>1979</u>	<u>1980</u>
Additional partnership income from Precision Automotive	\$ 4,244.80	\$ 2,028.50
Additional income based on analysis of cash availability and total living expenses	\$30,000.00	\$24,176.00
Medical expense is adjusted due to increase in adjusted gross income	\$ 700.00	\$ 576.00
NET ADJUSTMENT	<u>\$34,944.80</u>	<u>\$26,780.50</u>

b) to Joseph and Diana Mauceri incorporating the following adjustments:

	<u>1979</u>	<u>1980</u>
Additional partnership income from Precision Automotive	\$ 4,244.80	\$ 2,028.50
Additional income based on analysis of cash availability and total living expenses	\$12,181.00	\$20,458.00
Medical expenses are adjusted due to the increase in adjusted gross income	\$ 327.00	\$ 674.60
NET ADJUSTMENT	<u>\$16,752.80</u>	<u>\$23,161.10</u>

c) to Precision Automotive incorporating the following adjustments:

	<u>1979</u>	<u>1980</u>
Additional receipts based on unexplained cash determined during audit of partners	\$42,181.00	\$44,634.00
Depreciation expense is adjusted by the amount attributable to auto, Cadillac determined not held for income producing purposes	\$ 6,316.00	\$ 3,158.00
Title insurance is not deductible		\$ 899.00
Health insurance premiums paid on behalf of the partners is not a deductible business expense	\$ 2,173.60	
NET ADJUSTMENT	<u>\$50,670.60</u>	<u>\$48,691.00</u>

3. The additional income of each partner determined by the cash availability analysis method of income reconstruction was deemed to have come from the partnership and, accordingly, the total for each year at issue was held taxable to the partnership for unincorporated business tax purposes. The balance of the adjustments to the partnership for each year at issue was divided equally and attributed to each partner for personal income tax purposes.

4. The three petitioners each timely executed a consent form extending the period of limitation upon assessment of personal income and unincorporated business taxes for the year ended December 31, 1979 to any time on or before October 15, 1983.

5. Based on the abovementioned statements of audit changes, the following notices of deficiency were issued by the Audit Division for 1979 and 1980 on June 22, 1983:

a) against Matthew and Diana Holochuck asserting additional personal income tax of \$6,909.29, penalty of \$345.46, plus interest of \$2,290.28, for a total due of \$9,545.03.

b) against Joseph and Diana Mauceri asserting additional personal income tax of \$4,063.60, penalty of \$203.19, plus interest of \$1,296.71, for a total due of \$5,563.50.

c) against Precision Automotive asserting additional unincorporated business tax of \$3,958.63, penalty of \$197.93, plus interest of \$1,283.86, for a total due of \$5,440.42.

6. The aforestated penalties were asserted for negligence pursuant to section 685(b) of the Tax Law. For unincorporated business tax purposes, section 722(a) of Article 23 incorporates section 685(b).



7. On December 20, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Matthew Holochuck and Joseph Mauceri d/b/a Precision Automotive. Said notice assessed sales tax due for the period December 1, 1979 through November 30, 1980 of \$3,112.00, plus interest of \$847.54, for a total due of \$3,959.54. The sales tax assessed resulted solely from the additional receipts attributed to the partnership based on the cash availability analysis of each partner. The reported taxable sales for each quarterly period were increased by the applicable prorated portion of the additional receipts.

8. On March 27, 1984, a Tax Appeals Bureau pre-hearing conference was held wherein the following revisions were made:

- a) to the deficiency asserted against Matthew and Diane Holochuck:
  - 1) Petitioners' cash availability shortage for 1979 was reduced by a Master Charge cash advance of \$850.00.
  - 2) Petitioners' cash availability shortage for 1980 was reduced by \$1,100.00 received from the sale of a Volkswagen.
  - 3) The adjustment for "additional partnership income" in 1979 of \$4,244.80 was reduced by 50 percent of the health insurance premium adjustment to the partnership of \$2,173.60.
  - 4) Medical expenses were adjusted due to a revised increase in adjusted gross income.
- b) to the deficiency asserted against Joseph and Diana Mauceri:
  - 1) Petitioners' cash availability shortages for 1979 and 1980 were reduced by Veterans Administration benefits received each year of \$2,148.00.

2) The adjustment for "additional partnership income" in 1979 of \$4,244.80 was reduced by 50 percent of the health insurance premium adjustment to the partnership of \$2,173.60.

3) Medical expenses were adjusted due to a revised increase in adjusted gross income.

c) to the deficiency asserted against Precision Automotive:

1) The partnership adjustments for "additional receipts" based on unexplained cash determined during audit of the partners of \$42,181.00 for 1979 and \$44,634.00 for 1980 were reduced based on revised cash availability shortages of the partners to \$39,183.00 for 1979 and \$41,386.00 for 1980.

9. No adjustments were made to the sales tax assessment at the Tax Appeals Bureau pre-hearing conference.

10. Petitioners, Matthew and Diane Holochuck, did not personally appear for the hearing. In their perfected petition, they alleged that:

"The corrected taxable income for Mr. Holochuck for 1979 includes in error rental security of \$1,475.00 and proceeds of a loan from Mr. Casbarro totalling \$20,000.00.

The corrected taxable income for 1980 includes in error master charge loans for \$2,200.00, rental security of \$2,620.00 and loans from Mr. Casbarro totalling \$15,000.00."

11. Petitioners, Joseph and Diana Mauceri, did not personally appear for the hearing. In their perfected petition, they alleged that:

"The corrected taxable income for Mr. Mauceri for 1979 includes in error master charge loans of \$1,500.00 and loans from father of \$5,000.00.

The corrected taxable income for Mr. Mauceri for 1980 includes in error living expenses paid by father of \$13,000.00."

12. Petitioners' representative contended that the alleged rental security payments received by Mr. Holochuck were deposited into his personal accounts

and, since they were not his funds, they were improperly considered in the cash availability analysis. Although a notarized, handwritten statement was submitted showing the purported dates, amounts and payors of rental security during 1979 and 1980, no documentation was submitted to show actual receipt of the payments or the transfer of such payments into Mr. Holochuck's accounts. Furthermore, his purported receipts of rental security in 1980 were for the same apartments as for 1979, which would have necessitated the return of the 1979 payments to the previous occupants.

13. Petitioners' representative submitted documentation evidencing that Mr. Holochuck received Master Charge cash advances during 1980 from the European American Bank totalling \$2,200.00. Credit was not given for this amount during the audit or the pre-hearing conference.

14. Petitioners' representative submitted a sworn affidavit from one James Casbarro wherein he deposed and said that:

"I am the Father-in-Law of MATTHEW HOLOCHUCK and I make this Affidavit concerning finances between myself and MATTHEW HOLOCHUCK.

That during the period from 1979 through 1980, I loaned MATTHEW HOLOCHUCK \$20,000.00 to help him with his financial needs and when the loan was not repaid as indicated, it was converted to a first mortgage on his home.

When MATTHEW HOLOCHUCK received an additional \$15,000.00 to aid him with his financial problems, and that there was a total of \$35,000.00 due and owing to me from MATTHEW HOLOCHUCK."

15. Mortgage documents were submitted into evidence for the original \$20,000.00 and the additional \$15,000.00; however, said mortgages were not recorded. Furthermore, no documentation was submitted to show that Mr. Holochuck had received said amounts. Receipt of such funds were not traceable into Mr. Holochuck's accounts.

16. No documentation was submitted to establish that Mr. Mauceri is properly entitled to Master Charge loans of \$1,500.00 for 1979 as claimed.

17. Petitioners' representative submitted an undated letter from one Anthony Mauceri wherein he stated:

"In regard (sic) to, and to certify that a personal loan I made to my son Joseph Mauceri in the year 1979. (\$5,000.00).

In addition I lived with him and his family in the year of 1980. And over the course of that year I gave him approximately \$13,000.00 for living expenses, food, room and board."

A notarized statement attesting to the above was submitted by petitioner Joseph Mauceri.

18. No traceable transfer of funds was shown to substantiate the alleged loans to petitioner Joseph Mauceri from his father Anthony Mauceri during the years at issue.

19. Petitioners' representative alleged that the depreciation adjustment to the partnership was erroneous. The depreciation that was disallowed was with respect to a 1979 Cadillac purchased on March 20, 1979 and claimed 100 percent for business purposes. It was contended that the Cadillac was loaned to customers when their automobiles were left for major repairs. No evidence was submitted to support such contention.

#### CONCLUSIONS OF LAW

A. That petitioners Matthew and Diane Holochuck failed to sustain their burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that they are properly due credit for rental security payments or loans from Mr. Holochuck's father-in-law. Accordingly, no such credit is allowed.

B. That petitioners Matthew and Diane Holochuck are properly entitled to credit for Master Charge cash advances of \$2,200.00 during the year 1980 (see Finding of Fact "13", supra).

C. That petitioners Joseph and Diana Mauceri have failed to sustain their burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that they are properly due credit for Master Charge loans or loans from Mr. Mauceri's father. Accordingly, no such credit is allowed.

D. That petitioner Precision Automotive has failed to sustain its burden of proof, imposed pursuant to section 689(e) of the Tax Law [as incorporated into Article 23 by section 722(a)], to show that it is properly due a depreciation deduction for the 1979 Cadillac. Accordingly, the adjustment made with respect to such depreciation deduction is sustained.

E. That petitioners are properly entitled to the credits previously allowed as the result of the Tax Appeals Bureau pre-hearing conference (see Finding of Fact "8", supra).

F. That the petitions of Matthew and Diane Holochuck, Joseph and Diana Mauceri and Precision Automotive are granted to the extent provided in Conclusions of Law "B" and "E", supra, and except as so granted, said petitions are, in all other respects, denied.

G. That the notices of deficiency issued against the three aforesaid petitioners on June 22, 1983 are to be modified so as to be consistent with the decision rendered herein.


H. That the petition of Matthew Holochuck and Joseph Mauceri d/b/a Precision Automotive is granted to the extent of reducing additional receipts to the proper revised amount based on the revisions made herein to each partner's adjustment for "additional income based on analysis of cash availability and total living expenses" and except as so granted, said petition is, in all other respects, denied.

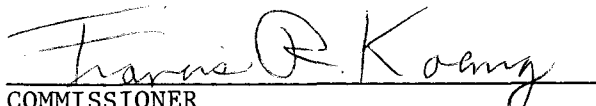
I. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1982 against petitioner Matthew Holochuck and Joseph Mauceri d/b/a Precision Automotive is to be modified so as to be consistent with the decision rendered herein.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 18 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER