STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MARGARET P. BECK	:	DETERMINATION DTA NO. 811017
for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Taxes under Article 22 of the Tax Law and the New York City Administrative Code for the Years 1985 and 1986.	:	

Petitioner, Margaret P. Beck, 754 North Broadway, Saratoga Springs, New York 12866, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the years 1985 and 1986.

A hearing was held before Brian L. Friedman, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on February 14, 1997 at 11:30 A.M., with all briefs to be submitted by October 11, 1997, which date began the six-month period for the issuance of this determination. Petitioner appeared by Kostelanetz & Fink, LLP (Robert S. Fink, Esq., of counsel). The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Craig Gallagher, Esq., of counsel).

***ISSUE*S**

I. Whether, pursuant to Tax Law § 651(b)(5)(A) and Administrative Code of the City of New York § 11-1751(b)(4), petitioner is entitled to relief, as an innocent spouse, from New York State and City of New York personal income taxes for the year 1986.

II. Whether the Division of Taxation erred in determining that petitioner was liable for taxes as a New York City resident for 1986.

FINDINGS OF FACT

1. On September 21, 1989, the Division of Taxation ("Division") issued a Notice of Deficiency to Jeffrey P. Beck and Margaret Beck asserting additional tax due in the amount of $459,316.87, plus penalty and interest, for a total amount due of $667,089.37 for the years 1985 and 1986. The notice indicated that New York State personal income tax of $61,568.04 was due for 1985 and $249,199.34 for 1986; City of New York personal income tax of $10,959.67 was due for 1985 and $137,589.82 for 1986. A Statement of Personal Income Tax Audit Changes issued to Jeffrey Beck and petitioner for 1986 indicated that "[w]e are holding you as a New York City resident for the entire year. Also, you failed to substantiate a charitable contribution of $900,000."

2. For the tax year 1986 petitioner and Jeffrey Beck filed a joint New York State personal income tax return. On the return, the only income attributable to petitioner was $312.00 in trust income reported on Schedule E.[1]

Mr. Beck filed an individual City of New York nonresident earnings tax return which he alone signed; petitioner did not file a City of New York return for 1986.[2]

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[1] On the joint New York State income tax return filed for 1985, alimony of $30,000.00 was reported along with trust income to petitioner in the amount of $994.00. No alimony was reported on the 1986 return.

[2] For 1985, Jeffrey Beck filed a City of New York nonresident earnings tax return which indicated that he had been a City resident from January 1 to April 11, 1985. Petitioner filed no City of New York tax return for 1985. Petitioner and Jeffrey Beck filed a form IT-360.1, Change of City Resident Status on which they claimed to have been City residents only for the period January 1 to April 11, 1985.

At the time of the issuance of the Notice of Deficiency, Margaret Beck ("petitioner") was separated and living apart from her husband, Jeffrey Beck. She testified that, as a result thereof, she was unaware that a conciliation conference had been held and that, on May 31, 1991, Jeffrey Beck signed a consent whereby the deficiencies for 1985 were canceled due to an overpayment of $17,329.72 for that year and the deficiency for 1986 was reduced to $195,564.34, plus interest. No penalty was asserted for 1986.

Immediately upon learning that a Consent Order had been issued, petitioner requested a conciliation conference which was held on February 14, 1992. A Conciliation Order (CMS No 120934) issued to petitioner on April 24, 1992, recomputed the Notice of Deficiency by determining an overpayment of $17,329.72 for 1985 and asserting a total tax deficiency of $195,564.34, plus interest computed at the applicable rate (no penalty was imposed on the deficiency). Of the total revised deficiency, $80,369.52 represented additional New York State personal income tax and $115,194.82 was additional City of New York personal income tax due.

3. Prior to meeting Jeffrey Beck in April 1982, petitioner attended Boston University where she studied film. She took no classes in finance, economics or math in college. After leaving Boston University (she did not graduate), she worked in the film industry in New York City where she became a free-lance film producer. Petitioner worked for various clients producing television commercials, documentaries, industrial training films, etc. She was not involved in the financial aspects of the film business. During these years, she did not prepare her own tax returns; instead, she relied on her uncle and an outside accountant to prepare them for her.

4. As previously indicated, petitioner met Jeffrey Beck in April 1982 and they began dating soon thereafter. At that time, Mr. Beck was the head of the mergers and acquisitions department of Oppenheimer & Company, earning an annual income in excess of $1,000,000.00. Petitioner and Jeffrey Beck were married in March 1983.

5. After receiving his Bachelor of Arts degree from Florida State University and a graduate degree in business administration from Columbia University Business School, Jeffrey Beck began working on Wall Street as an investment banker in the early 1970s. In 1979, he was hired by Oppenheimer & Company to found their mergers and acquisitions department. In 1985, he was hired by Drexel Burnham Lambert as a mergers and acquisitions specialist. He represented Beatrice and RJR Nabisco in the two largest leveraged buyouts of the 1980s. For performing these functions, Mr. Beck's annual salaries were in the millions of dollars.

Jeffrey Beck told his business associates that he was the heir to a billion dollar Florida family fortune. He also claimed that he had served in the Special Forces in Viet Nam and that he had received a silver star, two bronze stars and four purple hearts for acts of heroism. Petitioner stated that Jeffrey Beck's heroism in Viet Nam was legendary and was a part of his persona. While undergoing psychiatric care for what he stated to petitioner was post-traumatic stress syndrome caused by his Viet Nam experiences, Mr. Beck asked his wife to accompany him to his psychiatric sessions. At these sessions, petitioner heard him recount the Viet Nam experiences in great detail. Mr. Beck claimed that it was in Viet Nam that he first acquired the nickname "Mad Dog", which he continued to use while working on Wall Street. On their coffee table at home was a silver cigarette box which was inscribed with a testimonial to his heroism in Viet Nam. Mr. Beck showed petitioner wounds on his wrist which purportedly were suffered in Viet Nam. Petitioner saw a photograph of her husband on a transport helicopter.

6. During their marriage, Jeffrey Beck met the film director, Oliver Stone, and worked with him on a film about Wall Street and investment bankers. The film was entitled "Wall Street." Jeffery Beck acted in a small role in the film. He also collaborated with Oliver Stone in several films about Viet Nam, to wit, "Platoon" and "Born on the Fourth of July."

Oliver Stone was a Viet Nam veteran who was impressed by Jeffrey Beck's experiences there, and Stone expressed a desire to make a film based upon Beck's service in Viet Nam and his life thereafter. Michael Douglas, the actor and director, also became friendly with Jeffrey Beck and he expressed an interest in producing and starring in this film. Michael Douglas paid a writer the sum of $50,000.00 to write a script based upon Beck's story. However, Jeffrey Beck's accounts of his Viet Nam experiences were a fabrication.

7. The life of Jeffrey Beck became the subject of several articles, beginning with the Wall Street Journal in January 1990 and continuing with Newsweek in February 1991 and New York magazine in March 1991. These articles revealed that Jeffrey Beck was not an heir to a family fortune and that he had never received any medals for service in Viet Nam. As it turned out, he never served in Viet Nam and was never even in the military service. A book written by Anthony Bianco entitled *Rainmaker: The Saga of Jeff Beck, Wall Street's Mad Dog* (Random House, 1991) detailed Beck's numerous deceptions and the actual facts of his life. Soon after, Jeffrey Beck suffered a nervous breakdown and, in July 1991, he was institutionalized.

8. As previously noted, petitioner and Jeffrey Beck were married in March 1983 and a daughter, Katherine, was born in 1984. Petitioner did not continue to work after the marriage. While she had some income from a trust and from alimony from a prior marriage, Mr. Beck's sizable income supported the family. He earned much more than they could spend. While there

were some years in which Jeffrey Beck earned more than in others, petitioner stated that their standard of living remained basically the same.

Along with caring for their daughter, petitioner was responsible for running the household and for entertaining. Entertaining and traveling were a substantial part of Jeffrey Beck's business.

9. During their marriage, the Becks lived in a two-bedroom apartment located at 31 East 79th Street in New York City. This apartment was purchased by the couple in 1983 for approximately $540,000.00. They also purchased a house in Pound Ridge, New York in late 1984 or early 1985 for approximately $850,000.00. The Becks used the Pound Ridge house primarily on weekends although petitioner sometimes stayed in the house during the week. Petitioner testified that in 1988 she moved into this house full time after they sold the East 79th Street apartment.

10. The Margo and Jeffrey Beck Foundation ("the Foundation") was conceived by Jeffrey Beck. The law firm of Davis Polk & Wardwell drafted the Foundation's certificate of incorporation. On December 9, 1985, the Internal Revenue Service determined that the Foundation was exempt from Federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code.

The certificate of incorporation indicated that Jeffrey Beck was the chairman of the board and president of the Foundation; petitioner was the vice president, secretary and treasurer. Petitioner testified that the only document pertaining to the Foundation which she ever signed was related to its initial formation. An affidavit of Jeffrey Beck, sworn to on May 19, 1992, stated that petitioner did not run the day-to-day business affairs of the Foundation and did not maintain its books and records.

11. Petitioner's responsibility with respect to the foundation was to seek out and meet with organizations to which the Foundation could make donations. Jeffrey Beck was responsible for making the actual donations. Petitioner had no information available to her from which she could determine whether a contribution was actually made by the Foundation.

All of the mail pertaining to the Foundation was sent either to Jeffrey Beck's office or to the Foundation's accountant. However, letters of gratitude were sometimes sent to the home and were, therefore, read by petitioner. She also received some verification of donations when they were listed on an organization's program or when people thanked her directly. For these reasons, petitioner had no reason to doubt her husband's statements that contributions had been made by the Foundation.

12. All matters relating to the preparation and filing of the couple's income tax returns were the responsibility of Jeffrey Beck. He employed a bookkeeper and a certified public accountant, Jerry Ranzell, to assist in the preparation of the returns. Due to the size and nature of Mr. Beck's earnings and investments, the tax returns were quite complex. Petitioner met Mr. Ranzell on only one occasion at her husband's office. Her only other contact with him was when she telephoned him to request some information. Mr. Ranzell informed her that he worked for Jeffrey Beck and not for her and refused to provide her with the information sought.

The affidavit of Jeffrey Beck stated that all matters relating to the preparation and filing of the couple's 1985 and 1986 income tax returns were handled by Jerry Ranzell and by Mr. Beck, with the assistance of a bookkeeper. Other than in a ministerial capacity, petitioner was not involved in the process. Mr. Beck further stated that once the returns were completed, he presented them to petitioner for her signature and told her where to sign them. He indicated that

he did not discuss the returns in detail with her and gave her no reason to doubt that the returns properly reported their income and expenses.

13. Petitioner stated that, in reviewing the 1986 return, she noticed a large claimed deduction for charitable contributions to the Foundation. She asked Mr. Beck about it and when he told her that he had made a large contribution to the Foundation, she was pleased. Because Mr. Beck earned a sizable income for the 1986 tax year (approximately $3,400,000.00), the amount of the contribution did not appear to petitioner to be unusually large. Petitioner also knew that Mr. Beck's accountant, Mr. Ranzell, had assisted in the preparation of the return (and had signed the return) and, therefore, believed that he had adequate information for its preparation.

The charitable contribution at issue resulted in a tax savings of approximately $80,000.00 which, based upon the income earned by Mr. Beck for the year, had no affect on the lifestyle of the couple. Both petitioner and Jeffrey Beck (in his affidavit) indicated that their lifestyle in 1986 was no different than it was in 1985 or 1987. Petitioner received no personal benefit from the charitable contribution since Mr. Beck's income fully and comfortably supported petitioner and their daughter.

14. In September 1988, upon discovering that her husband had had several affairs during their marriage, petitioner separated from Jeffrey Beck. One of these affairs was with petitioner's riding instructor on whom Mr. Beck spent approximately $400,000.00 in cash. He also funded various improvements to her house. The separation agreement executed by the parties provided that Mr. Beck was to make monthly payments to petitioner for her maintenance and for the support of their daughter. After making several such monthly payments, Jeffrey Beck stopped supporting his wife and child in 1991.

After her separation from her husband, petitioner learned (because of the aforementioned news articles) that Jeffrey Beck had been married twice before his marriage to her. He had previously told her that she was his second wife. In addition, petitioner also discovered from these newspaper articles, that much of what he had told her about his past was untrue.

15. Petitioner and Jeffrey Beck were divorced in 1992. Sometime after his divorce from petitioner, Jeffrey Beck remarried. Pursuant to the divorce decree, petitioner received no alimony. However, Mr. Beck agreed that he would provide support for their daughter and, in addition, he would maintain a $300,000.00 life insurance policy on his life to cover expenses such as his daughter's education, medical bills, clothing and shelter.

In January 1994, Jeffrey Beck died. As previously noted, he had stopped making child support payments in 1991. He also left no insurance policy for the benefit of his daughter. Mr. Beck disinherited his daughter who was ten years old at the time of his death.

16. After her divorce from Jeffrey Beck, petitioner went back to work. She supported herself from the combined income from her job and from the trust which her grandmother had set up for her benefit. She stated that her lifestyle changed a great deal after her divorce from Jeffrey Beck. As of the date of the hearing, petitioner was leasing premises in Saratoga Springs, New York as her residence.

17. Petitioner testified that, for the tax year 1986, the Internal Revenue Service had asserted a Federal income tax deficiency. She stated that the only argument made by her counsel in the Federal tax matter was that the deficiency should be canceled on the ground that petitioner was an innocent spouse. Pursuant to an agreement between petitioner and the Commissioner of Internal Revenue, the United States Tax Court (Docket No. 25870-91) on May 11, 1992 decided that there was no deficiency in income tax due from petitioner for the 1986 tax year.

18. After she separated from Jeffrey Beck in 1988, petitioner asked her accountant, Debra Feeks, to attempt to obtain financial information and documentation from Mr. Beck's accountants and attorneys. This information was sought by her attorneys during the course of her matrimonial action against Jeffrey Beck and by her accountant in preparing her 1989 income tax returns and defending the claims made by the Internal Revenue Service and the Division of Taxation for additional taxes due for 1985 and 1986. An affidavit of Debra Feeks, vice president and manager in the Tax Consulting Department at U.S. Trust Company, states that she was unable to obtain the relevant information which was needed.

19. The affidavit of Jeffrey Beck stated as follows:

> During our marriage, I was responsible for the major financial and investment decisions concerning our family. Ms. Beck had no expertise in the area of taxes. In our marriage, I handled such affairs, and made all decisions concerning tax planning for the family without consulting or advising Ms. Beck in detail about such tax planning. Ms. Beck relied [on] and trusted me in this regard.

20. On May 1, 1997, petitioner filed a motion for an order granting her leave to reopen the record in order to introduce evidence of her adjusted gross income for the 1988 tax year. The purpose of the motion was to prove that the amount of the deficiency at issue was greater than 25 percent of her New York adjusted gross income for the taxable year ending before the date on which the Notice of Deficiency was issued. The provisions of Tax Law § 651(b)(5)(C)(ii) state that if the spouse's New York adjusted gross income for the most recent taxable year ending before the date on which the Notice of Deficiency is mailed is more than $20,000.00, the innocent spouse provisions shall apply only if the liability is greater than 25 percent of the adjusted gross income. By an order of this Administrative Law Judge dated August 7, 1997, the motion was granted and petitioner's affidavit of April 28, 1997 was accepted into evidence. It states that her 1988 New York adjusted gross income was $45,000.00 or less and the tax liability

asserted was greater than 25 percent of her adjusted gross income for the tax year ending before the date on which the Notice of Deficiency was mailed.

21. Petitioner contends that prior to 1988, she spent weekends at her Pound Ridge home and, in addition, often stayed in Pound Ridge throughout the week. Accordingly, it is her position that she was not in the City of New York for the requisite number of days to qualify as a resident during the year 1986. As a nonresident, she was not required to nor did she join in Jeffrey Beck's 1986 separate City of New York tax return.

In the alternative, petitioner maintains that Jeffrey Beck filed a separate nonresident City return which he knew was false. He did not seek to have petitioner join in the filing of that return either because he chose not to involve her in his fraud or because he knew that she would not agree to it. In any event, it is petitioner's position that she cannot or should not be liable for the individual City tax return of her husband.

CONCLUSIONS OF LAW

A. Tax Law former § 651 (b)(5) (A), effective April 17, 1985, provided, in pertinent part, that if:

> a joint return has been made . . . for a taxable year and on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse, the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement, then the other spouse shall be relieved of liability for tax (including interest, penalties and other amounts) for such taxable year to the extent that such liability is attributable to such substantial understatement.[3]

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[3] Chapter 65 of the Laws of 1985 , effective April 17, 1985, eliminated the requirement that, in order to qualify for innocent spouse treatment, there had to be an omission from New York adjusted gross income in an amount which was in excess of 25 percent of the amount of New York adjusted gross income stated in the return. In addition, chapter 65 of the Laws of 1985 also did away with the prior statutory mandate of "taking into account whether or not the

Since the only tax year remaining at issue is 1986, the above statutory provisions shall be applicable herein and there is no reason to consider the provisions of the statute as they existed prior to the 1985 amendments.

B. Unlike the statute, the regulation in effect during the period at issue, 20 NYCRR 145.10(e)(1), provided that relief under the innocent spouse provisions was available if:

> (i) the other spouse establishes that, in signing such return, he or she did not know, and had no reason to know, that there was such substantial understatement; and
>
> (ii) taking into account all the facts and circumstances, including whether or not the other spouse benefitted directly or indirectly from the grossly erroneous items, it is inequitable to hold the other spouse liable for the deficiency in New York State personal income tax for such taxable year attributable to such substantial understatement.[4]

C. There is no dispute that a joint New York State personal income tax return was filed for 1986 nor that there was a substantial understatement of tax attributable to grossly erroneous items of one spouse (the Division, in its brief, notes that Jeffrey Beck signed a consent for the assessed liability). Clearly, the evidence produced herein discloses that if there was a substantial understatement on the 1986 joint return, it was attributable to Jeffrey Beck. Petitioner testified and Jeffrey Beck (in his affidavit) acknowledged that he handled their business and financial affairs, including the preparation of the 1986 return. He also admitted that he was responsible for the business operations of the Foundation and for the transaction that resulted in the charitable contribution deduction which is at issue in this matter. The affidavit of petitioner admitted into

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other spouse significantly benefitted directly or indirectly from the items omitted from New York adjusted gross income."

[4] It should be noted that, despite the amendment to Tax Law § 651(b) in 1985 which deleted the "significant benefit" language, it remains in the regulation in effect during 1986 (20 NYCRR 145.10[e]) and in the current regulation (20 NYCRR 151.10[e]).

evidence pursuant to the order of this Administrative Law Judge (***see,*** Finding of Fact "20") established that petitioner qualifies for innocent spouse treatment pursuant to Tax Law § 651(b)(5)(C)(ii). The Division contends, however, that petitioner has failed to satisfy her burden of proving entitlement to innocent spouse relief on the basis that she has failed to meet the other requirements set forth in the statute and regulations.

First, as to the requirement that petitioner, in signing the joint return, did not know and had no reason to know that there was a substantial underpayment, the Division points to petitioner's testimony that she reviewed the return prior to signing it and did, in fact, question her husband about the rather large deduction listed for contributions to the Foundation. The Division also notes that petitioner was an officer, i.e., the vice president, secretary and treasurer of the Foundation. As an officer, she should have had access to the books and records of the Foundation and had a responsibility to review these records. The fact that she questioned her husband about the deductions demonstrates, in the view of the Division, that she had some knowledge or suspicion that "there was something wrong with this deduction." In support of its position, the Division cites to ***Bokum v. Commissioner*** (94 TC 126, ***affd on other grounds***, 992 F2d 1131, 93-2 US Tax Cas ¶ 50, 374), where the Tax Court held that actual or constructive knowledge of the erroneous deduction alone was sufficient to preclude innocent spouse relief.

Petitioner, on the other hand, states that at least four Federal appeals courts, including the Second Circuit (the court wherein an appeal would lie if brought by this petitioner under Federal law) have rejected ***Bokum***, holding instead that knowledge alone does not preclude innocent spouse status. Citing ***Friedman v. Commissioner*** (53 F3d 523) and ***Reser v. Commissioner*** (112 F3d 1258), petitioner maintains that the proper inquiry in an erroneous deduction case is not simply whether the spouse knew of the underlying transaction, but whether the spouse knew or

had reason to know that the deduction would give rise to a substantial understatement. I must agree with petitioner that this is the proper inquiry because the deduction was certainly not, on its face, erroneous. That is to say that petitioner knew of and was an interested participant in the activities of the Foundation. Accordingly, a substantial deduction for contributions to the Foundation would not, in and of itself, have alerted petitioner that her spouse was claiming a deduction, on behalf of the couple, to which they were clearly not entitled. Therefore, it will be necessary to examine the totality of the circumstances surrounding the claimed deduction in order to ascertain whether or not petitioner knew, or had reason to know, that this return would result in a substantial understatement of tax.

Prior to signing the return, petitioner reviewed it and admitted that she questioned Mr. Beck about the sizable contribution to the Foundation. He told her that the contribution had been made and, because of the amount of his income for the year (approximately $3.4 million), she did not feel that the amount of the contribution was unusually large. In fact, she testified that she was pleased by it. The return was prepared by Jeffrey Beck along with his bookkeeper and accountant. Mr. Beck's certified public accountant signed the return as preparer. Petitioner was not asked to nor did she ever provide any information to Mr Beck or his accountant relative to its preparation. Nothing else on the return appeared to be unusual to petitioner.

She had, in the past, received acknowledgments and expressions of gratitude, both orally and in writing, from beneficiaries of the Foundation's gifts. Perhaps, of greatest significance, is the fact that petitioner was as yet unaware that Jeffrey Beck could not be believed or trusted. It must be found, therefore, that petitioner did not know and had no reason to know, from her examination of the couple's joint return for 1986, that there was a substantial understatement of tax thereon.

D. The next consideration, in determining whether petitioner is entitled to innocent spouse relief, is whether, taking into account all of the facts and circumstances, it would be inequitable to hold her liable for the deficiency in tax attributable to the substantial underpayment. While, as previously noted, Tax Law former § 651(b)(5)(A) was amended to eliminate the "significant benefit" language, since such language remained in the regulations which were in effect during the period at issue, an examination of "all of the facts and circumstances" shall include an analysis of whether petitioner benefitted, directly or indirectly, from the erroneous deduction.

Petitioner's primary argument is that, taking into account all of the relevant facts and circumstances herein, it would be inequitable to hold her liable for the tax deficiency. In support of her argument, petitioner contends that she did not participate, in any way, in the wrongdoing of her then husband, that she did not receive any significant benefits as a result of the understatement (either during or after her marriage to Jeffrey Beck) and that she has been denied access to Mr. Beck's records which would have assisted her in proving her entitlement to innocent spouse status.

The Division disagrees with petitioner's contention that she did not benefit from the underpayment of tax. Although the Division acknowledges that the Becks were "wealthy" and that the tax savings of approximately $80,000.00 which resulted from the erroneous charitable contribution may not have significantly affected their standard of living, the Division nevertheless argues that impact on lifestyle is not the only criterion for determining benefit. It maintains that if the deduction did not truly benefit the taxpayers, there would have been no reason to claim it in the first place.

The Division's position is without merit. As noted in ***Matter of Sabatine*** (Tax Appeals Tribunal, August 25, 1988), whether a spouse benefitted significantly from income not included

on the return "is only a factor to be taken into account along with all the other facts and circumstances." The Tribunal went on to say that the real inquiry "is one of equity and is one which is answered based upon all of the facts and circumstances of the case." Obviously, the standard of living of the taxpayers is a highly relevant fact and circumstance which must be considered. If the Division's position was to be accepted, then any erroneous deduction or omission of income would theoretically result in benefit since the consequence would be, in all cases, additional funds available to enhance lifestyle. Whether this additional money was actually spent and whether the spouse seeking innocent spouse relief noticed the lifestyle enhancement would be irrelevant under the Division's theory. Since the question is one of equity which requires consideration of all of the facts and circumstances, this particular record must be analyzed in order to determine whether it would be inequitable to hold petitioner liable for the tax deficiency at issue.

Jeffrey Beck's income for 1986 was approximately $3.4 million, an amount which petitioner stated was more than adequate to fully support his family. The charitable deduction resulted in a tax savings of about $80,000.00 for that year. Their lifestyle was no different in 1986 than in 1985 or 1987. Both of the couple's homes were purchased prior to 1986. After petitioner separated from Jeffrey Beck in 1988, she received no support from him. While a separation agreement and subsequent divorce decree mandated that Mr. Beck make child support payments for his daughter, he stopped making these payments in 1991. At the time of Jeffrey Beck's death, petitioner was not married to him and their daughter was disinherited by his will. By reason of these facts, it must be found that petitioner failed to benefit, directly or indirectly, during or after the marriage, from the substantial understatement of tax attributable to Jeffrey Beck.

As to the issue of whether it would be inequitable to hold petitioner liable for the tax deficiency resulting from the substantial underpayment, there can be no question that it would. The life of Jeffrey Beck was replete with deception. He deceived friends and business associates about his background, i.e., he was heir to a billion dollar fortune and was a decorated Viet Nam veteran. He deceived noted film director Oliver Stone and famed actor and director Michael Douglas about his Viet Nam experiences. He lied to petitioner about his background (including Viet Nam) and told her that she was his second wife when, in fact, he had been married twice before. The life (and lies) of Jeffrey Beck was the subject of articles in the Wall Street Journal, Newsweek and New York magazine. A book by Anthony Bianco, *Rainmaker: The Saga of Jeff Beck, Wall Street's Mad Dog* (Random House, 1991) chronicled Jeffrey Beck's numerous deceptions. It was not, however, until the publication of the articles in 1990 and 1991 that petitioner became aware of Jeffrey Beck's deceptions. Prior to her learning of his infidelities in 1988, she had no reason not to trust him with the financial decisions (including preparation of the couple's tax returns) which, based upon his education and occupation, he seemed well equipped to make.

Despite the Division's contentions to the contrary, it is worth noting, in analyzing whether petitioner has met her burden of proving entitlement to innocent spouse treatment, that petitioner, her attorneys and accountant were never able to obtain Jeffrey Beck's financial records despite numerous attempts to do so. Nevertheless, it is clear, based upon the record presented herein, that it would be highly inequitable to hold petitioner liable for the tax deficiency resulting from the substantial understatement of tax made by Jeffrey Beck. Accordingly, it is hereby found that petitioner is entitled to relief, as an innocent spouse, from the New York State personal income tax liability on the joint return filed by her and Jeffrey Beck for the year 1986.

E. Having determined that petitioner is entitled to relief from the New York State portion of the deficiency ($80,369.52 plus interest), I next address whether she should also be relieved from liability from the City of New York portion of the deficiency ($115,194.82 plus interest).

At the hearing, petitioner testified that, during the year at issue, she did, at times, stay at the Pound Ridge house during the week as well as on weekends (when Mr. Beck also stayed there). It was her position, therefore, that she was a nonresident of the City of New York for 1986 since she spent less than 183 days in New York during that year.

While credible testimony can be sufficient to prove that petitioner spent less than 183 days in the City (***see*, *Matter of Avildsen***, Tax Appeals Tribunal, May 19, 1994), any taxpayer who attempts to sustain his burden of proof solely on testimonial evidence runs a very great risk that the testimony will not be credible to establish the necessary facts ***(see*, *Matter of Airport Indus. Park***, Tax Appeals Tribunal, April 11, 1991).

In the present matter, petitioner's testimony was not incredible; however, it was extremely general and vague with respect to the number of days spent in and out of New York City during 1986. This testimony cannot, therefore, be found to be sufficient to establish that she was a nonresident of the City for 1986.

F. The requirements for entitlement to innocent spouse treatment for purposes of the City of New York personal income tax are set forth in Administrative Code of the City of New York § 11-1751 (b)(4). As is the case with the State statute (Tax Law § 651[b][5]), the City statute requires that in order to qualify for innocent spouse relief, a joint (City) return had to have been filed for the taxable year (***see***, Administrative Code § 11-1751[b][4][D]).

Administrative Code § 11-1751(b)(2) provides that if the New York State personal income tax liabilities of a husband and wife are determined on a joint return (which was the case herein),

they are required to file a joint City personal income tax return. 20 NYCRR Appendix 20, § 21-8 states that every nonresident subject to tax is required to file a separate nonresident earnings tax return; no joint returns are permitted. For 1985, Jeffrey Beck and petitioner filed a form IT-360.1, Change of City Resident Status, on which it was claimed they became nonresidents of the City as of April 11,1985. Accordingly, Jeffrey Beck filed a nonresident earnings tax return for 1986. Despite the fact that the Division subsequently determined that Mr. Beck was a City resident for 1986 (and Mr. Beck thereafter executed a consent acknowledging his liability for tax as a City resident), petitioner, as a result of her then husband having filed his separate nonresident return, was precluded from filing a joint return.

Although it has heretofore been determined that petitioner was a City resident for 1986 (by virtue of her having failed to prove that she was a nonresident) and should have filed a resident return for the year, such return would had to have been a separate return in any case. Had she been a nonresident, as she believed that she was, she would not have been required to file a return inasmuch as she had no wages or net earnings from self-employment derived within New York City for the year. As a resident, she still would have had to file a separate return since her husband elected to file as a nonresident (and joint nonresident returns are not permitted).

Public Law 91-679, approved January 12, 1971, added a new subsection (e) to section 6013 of the Internal Revenue Code, thereby creating the Federal innocent spouse provisions. This statute granted innocent spouse relief, under certain enumerated circumstances, from liability arising from a joint return. At the Federal level, a husband and wife *may elect* to make a joint return (Treas Reg § 1.6013-1[a]). However, upon such election for Federal purposes, New York State *mandates* that the husband and wife file a joint State income tax return and that their tax liabilities be joint and several (Tax Law § 651[b][2]). If the husband and wife file a joint

State return, Administrative Code § 11-751(b)(2) requires that they file a joint City tax return unless one is a resident and the other is a nonresident. Clearly, the decision to file a joint return is an election at the Federal level which, if made for Federal purposes, becomes a requirement at the State and City levels.

After the enactment of Public Law 91-679 in 1971, the State decided to amend the Tax Law to conform with the amendments to the Federal income tax with respect to the liability of an innocent spouse. In expressing his support for the bill, the Commissioner of Taxation and Finance stated as follows:

> This bill is designed to conform with the changes in federal income tax made by Public Law 91-679. The principles set forth in this legislative proposal for relieving an innocent spouse of certain liability under a joint return are derived from the federal legislation. These principles set forth reasonable standards under which the innocent spouse can be relieved of liability. (Mem of Tax Commissioner, April 20, 1972, Governor's Bill Jacket, L 1972, ch 209.)

It appears, however, that the drafters of the State legislation did not anticipate a situation such as the one at issue herein. While it may well have seemed logical to make the innocent spouse provisions applicable solely to joint returns since that is the only apparent instance where there would be joint and several liability on the part of the spouse seeking innocent spouse relief, the present matter illustrates the flaw in that logic. For Federal purposes, if no joint return was filed, there is no need for such relief since the "innocent spouse" would have filed his or her own return and would not be liable for the substantial understatements contained on the return of the other. But for State and City purposes, the filing of a joint return (after electing to do so on the Federal return) is required by statute and if the taxpayers neglect or refuse to do so, or particularly if one of the spouses neglects or refuses to do so, the Division will, nevertheless, hold each spouse

jointly and severally liable for the tax which should have been reported and paid on the joint return.

In the present case, the Division is maintaining that, since petitioner and Jeffrey Beck were State and City residents, they were required to file joint State and City returns. In essence, the Division is saying that because they had filed a joint Federal return (and were, therefore, required to file joint State and City returns), it is proper to hold petitioner jointly and severally liable for the tax liability of Jeffrey Beck. However, since petitioner did not file a joint return with Mr. Beck, she cannot now avail herself of innocent spouse relief, a remedy which by statute is available only to joint filers. Yet, as previously noted, it was not possible for petitioner to file a joint return with Jeffrey Beck since he elected to file a separate nonresident return (and joint nonresident returns are not permitted). It is completely irrational to hold petitioner liable for the understatement of tax made by her husband on his *separate* return on the basis that a joint return was required to have been filed, while at the same time denying her the statutory relief (innocent spouse status) available to a joint filer. When it has been determined that petitioner is entitled to innocent spouse relief for purposes of the State portion of the deficiency, it is not logical to hold her liable for City tax in the amount of $115,194.82, plus interest, when the only income attributable to her was $312.00 in trust income reported on Schedule E on the 1986 Federal return. This would be an absurd result which, presumably, was not contemplated by the State legislature and City Council when they enacted these statutes.

Constructions of statutes which render such statutes ineffective or which lead to absurd results will be rejected (McKinney's Cons Laws of NY, Book 1, Statutes §§ 144

and 145). A literal reading and interpretation of Administrative Code § 11-1751(b)(4) would preclude petitioner from qualifying for innocent spouse status as to the City portion of the deficiency despite having proved her entitlement thereto for State purposes simply because she did not (and could not) file a joint return.

Accordingly, it must be held that petitioner was entitled to innocent spouse relief with respect to the City of New York portion of the deficiency as well as to the State portion. Since, however, she has been found to have been a resident of the City of New York for 1986, the Division is hereby directed to compute the City personal income tax due, if any, on her own income of $312.00 for the year. If there is, in fact, tax due thereon, petitioner shall be liable for this tax together with applicable penalties and interest.

G. The petition of Margaret P. Beck is granted to the extent indicated in Conclusion of Law "F"; the Division is directed to recompute the Notice of Deficiency in accordance with Finding of Fact "2" (which reduced the deficiency pursuant to

Conciliation Order [CMS No. 120934]) and Conclusion of Law "F"; and, except as so granted, is in all other respects denied.

DATED: Troy, New York
April 9, 1998

/s/ Brian L. Friedman
ADMINISTRATIVE LAW JUDGE