

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**JINDER AND ASHA RANI SIDHU** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of : DTA NO. 818554  
New York State Personal Income Tax under Article 22 :  
of the Tax Law and New York City Personal Income Tax :  
under the Administrative Code of the City of New York :  
for the Year 1993. :

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Petitioners, Jinder and Asha Rani Sidhu, 58-30 Vancliff Street, Corona, New York 11368, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under the Administrative Code of the City of New York for the year 1993.

A hearing was held before Dennis M. Galliher, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on February 26, 2002 at 10:45 A.M., with all briefs to be submitted by July 30, 2002, which date commenced the six-month period for the issuance of this determination. Petitioners appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Herbert M. Friedman, Esq., of counsel).

***ISSUE***

Whether petitioners have established that the Division of Taxation incorrectly determined the amount of their income and their resulting income tax liability for the year 1993.

***FINDINGS OF FACT***

1. In 1996, the Division of Taxation (“Division”) received information from the Internal Revenue Service (“IRS”) indicating that petitioners, Jinder and Asha Rani Sidhu, had filed a 1993 Federal income tax return reflecting a New York address. The Division’s records, in contrast, did not show that petitioners had filed any New York State income tax return for 1993. Accordingly, the Division issued a letter to petitioners, dated September 16, 1996, inquiring as to petitioners’ filing, if any, for the year 1993. When no response was received, the Division sent a second such letter, dated December 13, 1996. Again, no response was received.

2. On June 9, 1997, the Division issued to petitioners a Statement of Proposed Audit Changes pertaining to the year 1993. This statement explained that the Division had no record of a return having been filed for petitioners for 1993, and went on to calculate a New York tax liability for the year in the aggregate amount of \$6,000.00, consisting of \$3,844.00 in New York State personal income tax and \$2,156.00 in New York City personal income tax. The income upon which this liability was calculated was taken from the information supplied by the IRS, which showed petitioners’ adjusted gross income to be \$69,432.00 for 1993. The Division’s calculations reduced this amount by the New York standard deduction (\$9,500.00) and by the allowance of two dependent exemptions (\$2,000.00), thereby arriving at New York taxable income of \$57,932.00. Finally, the statement reflected the imposition of penalties for late filing and for negligence, pursuant to Tax Law § 685(a)(1); (b)(1) and (2).

3. On June 15, 1997, petitioners filed a New York State (and City of New York) Resident Income Tax Return (“Form IT-201”) for the year 1993. On this return, petitioners reported business income (at line 6) in the amount of \$10,205.00, based on Mr. Sidhu’s work as a taxicab

driver in New York City.<sup>1</sup> This amount was reduced by self employment tax of \$721.00 to arrive at Federal (and New York) adjusted gross income of \$9,484.00.

4. On October 20, 1997, the Division issued to petitioners a Notice of Deficiency asserting additional New York State and New York City personal income tax due in the aggregate amount of \$6,000.00, plus penalties and interest. The asserted deficiency, including penalties, was premised upon the calculations set forth in the Statement of Proposed Audit Adjustments.

5. Petitioners challenged the Notice of Deficiency by filing a Request for a Conciliation Conference with the Division's Bureau of Conciliation and Mediation Services. A conference was held on April 23, 1998, and by a Conciliation Order (CMS No. 164437) dated March 16, 2001, the Notice of Deficiency was sustained. Petitioners continued their challenge by filing a petition with the Division of Tax Appeals.

6. The record includes two Federal income tax returns (Forms 1040) filed in petitioners' names for 1993. The first return, bearing an IRS receipt stamp dated October 13, 1994, reports wage income of \$62,000.00 plus taxable interest income of \$69.00, no adjustments to income, and thus adjusted gross income of \$62,069.00. The return reflects a tax liability of \$8,216.00 and an overpayment to be refunded in the amount of \$8,704.00. An attached Wage and Tax Statement (Form W-2) in Mr. Sidhu's name reflects wage income in the amount of \$62,000.00 paid to Mr. Sidhu by Kashmir Palace Indian Cuisine of West Haven, Connecticut, and reports Federal income tax withheld in the amount of \$16,920.00.

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<sup>1</sup> This net business income was taken from Schedule C ("Profit or Loss From Business") filed by Mr. Sidhu, showing gross receipts of \$33,800.00, less expenses of \$23,595.00.

7. The second return, bearing an IRS receipt stamp dated April 18, 1995, reports business income (at line 12) of \$7,882.00 plus taxable interest income of \$38.00, to arrive at total income of \$7,920.00, a reduction adjustment of \$557.00 for self employment tax, and a resulting adjusted gross income of \$7,363.00. This return includes an attached Schedule C reflecting gross receipts from Mr. Sidhu's work as a taxicab driver in the amount of \$33,233.00, less total expenses of \$25,341.00, to arrive at net business income of \$7,882.00. This return reflects a liability in the amount of \$1,114.00, an earned income credit of \$1,428.00, and a resulting refund claimed in the amount of \$314.00.

8. Petitioners acknowledge that they filed the New York State Form IT-201 and the second Federal income tax return described above, but deny that they filed the first Federal income tax return. Petitioners submitted a transcript of their filings with the IRS. This transcript shows both Federal filings as described above, including adjusted gross income (totaled from the two returns) in the amount of \$69,432.00, as used by the Division in its calculations. The transcript also shows the issuance of a refund check in the amount of \$8,704.00, as claimed on the first filing, the calculation of additional tax due based on the second filing, and the payment thereof via the application of credits due from refunds for subsequent years.

9. On or about August 8, 1997, petitioners filed a claim with the IRS concerning the first Federal income tax return and the associated refund check in the amount of \$8,704.00. In their claim, petitioners asserted that they had not received, signed, cashed, or deposited the refund check in question, nor had they given permission for the same to be cashed, nor had they received benefits or money from the cashing of such check.

10. The IRS furnished to petitioners a copy of the front and back of a tax refund check in the amount of \$8,704.00, dated November 11, 1994 and issued in the name of petitioners. The check is endorsed under the purported signatures of petitioners.

11. Petitioner Jinder Sidhu has worked as a medallion taxicab driver in New York City for a number of years. At some point, Mr. Sidhu became involved with the Kashmir Palace Indian Cuisine restaurant (“the restaurant”) in West Haven, Connecticut. Although the testimony is not entirely clear, it appears that Mr. Sidhu either became involved in the restaurant with a friend (i.e., he “went in on it with a friend”), or he took over the operation of the restaurant from a friend (i.e., he “was trying to run the restaurant”). The testimony concerning Mr. Sidhu’s involvement was that he “helped” in the restaurant in order to try to “get some money.” Again, the testimony is not entirely clear, although it appears that the restaurant was in operation in 1992. Mr. Sidhu suffered a stroke at some point during this time frame and required hospitalization in Connecticut and subsequent rehabilitation including physical therapy there. According to petitioners, the restaurant was located in leased premises and was closed in 1993 when the property was sold to Lender’s Bagels.

#### ***SUMMARY OF PETITIONERS’ POSITION***

12. Petitioners maintain that they did not file the first Federal return and did not receive the refund check issued in connection therewith. Petitioners speculate that this return was fraudulently filed by a Mr. Solanki, who had been introduced to Mr. Sidhu by a friend and who had approached petitioners with an offer to file their 1993 Federal income tax return for them. According to petitioners, Mr. Solanki made copies of their social security cards, then returned the cards, but later advised petitioners he would not be able to file their return as initially offered.

13. Petitioners disavow the \$62,000.00 wage income as shown on the Form W-2 attached to the first Federal filing (i.e., October 13, 1994), which the Division has subjected to New York State and City tax, and instead claim their only income for 1993 was from Mr. Sidhu's work as a taxicab driver (plus a small amount of interest income) as reported on their second (i.e., April 18, 1995) Federal filing and on their New York Form IT-201. Petitioners offered no details as to the amount of wage or other income, if any, which Mr. Sidhu might have earned from his involvement with the restaurant for any period of time. Rather, petitioners claim that the restaurant lost its lease and was not open in 1993, and that they therefore had no income from the restaurant in such year. Petitioners offered no information concerning the Form W-2 which was attached to the allegedly false Federal filing, other than the presumed claim that it must have been fraudulently created for filing by Mr. Solanki.

14. Petitioners were afforded an extended period of time, post hearing, for the possibility of resolution of their claim filed with the IRS regarding the refund check. No information, including any adjustment by the IRS to the amount of wage income shown on the Form W-2 attached to the first Federal filing, has been submitted.

#### ***CONCLUSIONS OF LAW***

A. The only issue presented in this matter is whether petitioners have established that the Division erred in the amount of income it has attributed to petitioners and subjected to New York State and City personal income tax for 1993. For its part, the Division simply utilized the aggregate amount of adjusted gross income reported by petitioners on the second Federal return (\$7,363.00), which return petitioners have acknowledged filing, plus the amount of adjusted gross income reported on the first Federal return (\$62,069.00). It is this latter amount, and

specifically the \$62,000.00 amount of wage income shown on the Form W-2 for the Kashmir Palace Indian Cuisine restaurant, which constitutes the amount of income in question.

B. Petitioners' challenge is based on the assertion that someone (Mr. Solanki) fraudulently filed the first Federal return, and received the refund check issued in connection therewith. This challenge is relevant to the subject matter at hand, i.e., the proper amount of income subject to New York tax, only insofar as to the accuracy and validity of the amount of income reported on the allegedly false Federal return, to wit, primarily the \$62,000.00 of wage income reflected on the Form W-2 attached to the return. Stated differently, the fact that someone other than petitioners may have received and cashed the Federal refund check is not determinative as to the question of whether petitioner Jinder Sidhu earned wage income from the restaurant or the actual amount of such income. As New York residents, petitioners were subject to New York tax on income from all sources, including wage income such as that at issue (Tax Law § 612). The only relevant question, then, is whether Mr. Sidhu earned wage income from the restaurant and, if so, the amount of such income.

C. Unfortunately, the evidence is insufficient to support a conclusion that the W-2 itself is false or that the amount of income reflected thereon is incorrect. It is of course possible that someone prepared a false Form W-2 to accompany the filing of a false return in the name of petitioners so as to obtain the refund proceeds as described. However, there is very limited information concerning the restaurant from which the Form W-2 and the contested wage income arises. The testimony describing the nature of Mr. Sidhu's involvement in the restaurant lacks detail and is inconsistent at best. There is no information as to the amount of money Mr. Sidhu earned with respect to his involvement in the restaurant during any time period (from which one might gauge whether wages of \$62,000.00 could be considered reasonable and thus cast doubt

on the validity of the Form W-2). Further, there is no evidence confirming the alleged date of the closure of the restaurant (from which one might conclude that no wages at all were paid in 1993). In sum, the record does not contain sufficient information to support a conclusion that Mr. Sidhu earned no income from the restaurant during 1993, or earned wage income in an amount less than that reflected on the Form W-2 accompanying the Federal filing. Accordingly, the Division's reliance upon such amount as reported on the Form W-2 and on the Federal filing was reasonable and is accepted, as is the ensuing calculation of tax due based thereon and asserted in the Notice of Deficiency.

D. The petition of Jinder and Asha Rani Sidhu is hereby denied, and the Notice of Deficiency dated October 20, 1997, together with penalties and interest, is sustained.

DATED: Troy, New York  
January 16, 2003

/s/ Dennis M. Galliher  
ADMINISTRATIVE LAW JUDGE