

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

NORMAN STEIN

:

DECISION

:

for Redetermination of Deficiencies or for
Refund of New York State and New York City
Personal Income Tax and Unincorporated Business
Taxes under Articles 22 and 23 of the Tax Law :
and Chapter 46, Title T of the Administrative
Code of the City of New York for the Years 1976 :
through 1980.

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Petitioner, Norman Stein, 1745 52nd Street, Brooklyn, New York 11204,
filed a petition for redetermination of deficiencies or for refund of New York
State and New York City personal income tax and unincorporated business taxes
under Articles 22 and 23 of the Tax Law and Chapter 46, Title T of the
Administrative Code of the City of New York for the years 1976 through 1980
(File No. 36544).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices
of the State Tax Commission, Two World Trade Center, New York, New York, on
January 13, 1987 at 9:15 A.M. and was continued to conclusion on February 25,
1987 at 1:15 P.M. with additional evidence submitted on March 25, 1987.
Petitioner appeared by Martin Oliner, Esq. The Audit Division appeared by
John P. Dugan, Esq. (Gary R. Palmer, Esq., of counsel).

ISSUE

Whether the Audit Division accurately reconstructed petitioner's income
for the years 1976 through 1980 using a source and application of funds audit
method.

FINDINGS OF FACT

1. On November 25, 1981, the Audit Division issued against petitioner, Norman Stein, six notices of deficiency asserting personal income taxes ("PIT") and unincorporated business taxes ("UBT") due as follows:

<u>Year</u>	<u>Tax</u>	<u>Tax Due</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
1976	PIT	\$ 4,389.37	\$1,097.34	\$2,744.72	\$ 8,231.43
1976	UBT	1,350.86	337.71	843.13	2,531.70
1977, 1978	PIT	10,133.00	4,018.44	4,156.18	18,307.62
1977, 1978	UBT	3,675.00	1,512.02	1,506.18	6,693.20
1979, 1980	PIT	9,249.05	2,348.04	1,223.32	12,820.41
1979, 1980	UBT	2,975.00	805.02	414.80	4,194.82

2. Petitioner filed 1976 personal income and unincorporated business tax returns on or about November 20, 1979. When the audit **at** issue began in June 1981, petitioner had not filed returns for the years 1977, 1978, 1979 and 1980. After several contacts by the Audit Division, petitioner still failed to file returns for those years or **to** provide any information regarding his income. Consequently, the Audit Division estimated his taxable income for the years 1976 through 1980 based on the information contained in the 1976 return.

3. Following issuance of the notices, petitioner filed returns for the years 1977 through 1980 and provided the Audit Division with bank statements, check registers, statements of investments and other financial records for 1978, 1979 and 1980. Using these documents, the auditor reconstructed petitioner's income for the years **at** issue using a source and application of funds method. Petitioner's cash requirements (or application of funds) were estimated by aggregating deposits to several savings and checking accounts and adding to this estimated cash living expenses for a household of petitioner's size. In some cases, deposits were estimated on the basis of interest income received. Throughout the years in question, petitioner's wife had a joint checking

as cash requirements of petitioner. Since records were not available for 1976 and 1977, deposits to the Stein-Kesten account were estimated for those years based on deposits made in the later years. Total cash requirements for each year were subtracted from total income (or sources) to arrive at additional, unreported income. No revision of the deficiencies asserted was made based on this audit.

4. Additional records were made available by petitioner in 1985. Using these records, the Audit Division recalculated petitioner's income for the years at issue with the following results: (a) for 1979 and 1980, the Audit Division found no additional income and no additional personal income or unincorporated business tax due; (b) for 1978, the Audit Division determined a taxable income of \$25,381.00, with a personal income tax due on that amount of \$2,715.00 and an unincorporated business tax due of \$1,172.00; (c) for 1977, the Audit Division determined a taxable income of \$24,612.00, with a personal income tax due on that amount of \$2,621.00 and an unincorporated business tax due of \$965.00; and (d) for 1976, the Audit Division determined a taxable income of \$32,182.00, with a personal income tax due of \$4,175.00 and an unincorporated business tax due of \$1,262.00.

5. At hearing, petitioner produced additional documentation for the years 1976 through 1978. The Audit Division reviewed the documents presented for 1976 and 1977 and, as a result, petitioner's additional taxable income was determined to be \$7,416.00 in 1976 and \$12,033.00 in 1977. The auditor did not review documents submitted for 1978; therefore, the disputed additional income for that year remains at \$25,273.00.

6. Petitioner submitted a substantial amount of documentation to support his position.

1976

(a) Bank statements, mutual fund income statements and tax returns substantiated that deposits to the Stein-Kesten account in the amount of \$3,339.00 represent income to Max Kesten reported as such on Kesten's 1976 tax returns.

(b) A calculation error by the original auditor resulted in an overstatement of applications in the amount of \$729.00.

(c) A number of bank deposits were characterized as loans, transfers between accounts or deposits of checks later returned for insufficient funds. Because of the lack of complete records, it was not possible to substantiate these claims.

1977

(d) Petitioner substantiated that \$4,669.64 treated as an application of income was actually income to Max Kesten and reported as such by Kesten.

(e) One deposit of \$700.00 was shown to be a loan repayment from petitioner's sister-in-law.

(f) Income of \$814.61 from a limited partnership was not previously taken into account as an income "source".

1978

(g) Petitioner presented sufficient documentation to substantiate that he had no additional income in 1978. The shortage discovered on audit was attributable primarily to funds deposited in the Stein-Kesten account. These funds were shown to be Medicaid and other insurance reimbursements to Kesten for medical expenses.

CONCLUSIONS OF LAW

A. That as provided by sections 689(e) and 722 of the Tax Law, the burden of proof to show that the audit conducted was inaccurate or incorrect is upon the petitioner.

B. That based on documentation provided by petitioner, the Audit Division has conceded that petitioner had no additional or unreported income in 1979 and 1980. Documentation presented by petitioner at hearing established that petitioner had no additional income in 1978.


C. That petitioner produced substantial documentation which established that additional income should be reduced to \$4,077.00 for 1976 and to \$6,663.36 for 1977.

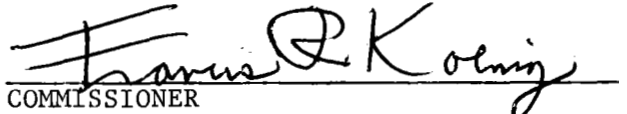
D. That the petition of Norman Stein is granted to the extent indicated in Conclusions of Law "B" and "C"; that the notices of deficiency for 1976 and 1977 issued on November 25, 1981 shall be modified accordingly; that the notices of deficiency for 1978, 1979 and 1980 issued on November 25, 1981 are cancelled; and that, in all other respects, the petition is denied.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 27 1987


PRESIDENT


COMMISSIONER


COMMISSIONER