

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN T. DOORLEY AND CAROLE A. DOORLEY

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1978.

Petitioners, John T. Doorley and Carole A. Doorley, 56 Kohring Circle S, Harrington Park, New Jersey 07640, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1978 (File No. 37562).

On October 23, 1985, petitioners waived a hearing before the State Tax Commission and submitted the matter for decision based upon the Audit Division file, as well as a brief and additional documents to be submitted by October 8, 1986. After due consideration of the record, the State Tax Commission hereby renders the following decision.

ISSUES

I. Whether the Notice of Deficiency was issued without any basis and for the sole purpose of extending the period of limitation on assessment.

II. Whether petitioners have substantiated that they were engaged in a trade or business during the year at issue.

III. Whether petitioners have substantiated the character and amount of business expenses claimed as deductions from gross income for the year at issue.

FINDINGS OF FACT

1. Petitioners, John T. Doorley and Carole A. Doorley, filed a joint New York State Income Tax Nonresident Return (With City of New York Nonresident Earnings Tax) for the year 1978. On said return John T. Doorley reported his occupation to be "Communications" and Carole A. Doorley reported her occupation to be "Sales".

2. Petitioner John T. Doorley reported business income of \$18,613.00. A Federal Schedule C attached to the return reported the following income and deductions:

Schedule C - Income From Business or Profession - Communications

Revenues - Institutional	\$25,083	
- Visual House	1,200	
- Misc.	<u>175</u>	\$26,458

Expenses -

Payments to Carole Doorley -		
Secretarial (8/1/78-12/31/78)	3,000*	
Promotion For Features	1,183	
Stationery, Cassettes, Tapes	497	
Accounting	125	
Newspapers, Magazines	298	
Reading Materials & Books	376	
Professional Development Expense	691	
Meeting Expense	629	
Dues	180	
Graphic Arts	264	
Cultural Events Attendance	602	7,845

NET INCOME	<u><u>18,613</u></u>
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* Reported as other income in Carole Doorley's Schedule C

3. Attached to the return was a Wage and Tax Statement issued to petitioner John T. Doorley by Sterling Drug Inc., in New York City showing \$25,083.48 in "Wages, tips, other compensation". The legend "Included in Schedule C" with an arrow pointing to said figure was stamped on the statement.

4. A Federal Schedule C attached to the return reported the following business income and deductions claimed by petitioner Carole A. Doorley during 1978:

Schedule C - Income From Business or Profession - Sales

Revenues - R. Merrell Assignment	\$1,272	
- Other	<u>3,000</u>	\$4,272
Expenses:		
Professional Development Expense	250	
Hospitality	83	
Delivery, Tolls: 3,800 mi. @ 17¢ =	646	
Tolls	<u>26</u>	672
Telephone	180	
Postage	83	
Meeting Expense	1,596	
Art, Artists, Typesetting	281	
Newspapers, Magazines	294	
Attendance - Drama Events for		
Public Speaking Styles	378	
Real Estate License Expense	102	
Grooming For Sales Meetings	250	4,169
NET INCOME		<u><u>103</u></u>

5. The record does not contain any wage and tax statements issued to petitioner Carole A. Doorley. The Income of \$3,000.00 reported as "other" was purportedly paid to her by petitioner John T. Doorley for secretarial services rendered.

6. Petitioner John T. Doorley filed an unincorporated business tax return, which was subsequently amended, whereon he reported net profit of \$18,613.00. Said amount was then reduced by a subtraction for "FICA Wages Included in Schedule C" of \$25,083.00 yielding a net **loss** from business.

7. On petitioners' 1978 personal income tax return they claimed itemized deductions. However, no miscellaneous deductions were claimed. Additionally, no adjustments to income were claimed by petitioners.

8. Petitioners' tax return was selected for examination along with those of approximately 100 other individuals on the basis that said returns had been prepared by a particular accountant. **An** investigation had disclosed that said accountant had consistently prepared returns on which an individual with wage or salary income shown on wage and tax statements had reported said income as business receipts on a Federal Schedule C. Department of Taxation and Finance auditors were directed to review the returns and to disallow claimed business expense deductions if the taxpayer appeared to be an employee receiving wage or salary income reported on wage and tax statements. Petitioners' claimed Schedule C deductions were disallowed on that basis.

9. On March 26, 1982, the Audit Division issued a Statement of Audit Changes to petitioners whereon it was stated, ~~inter alia~~, that:

"Deduction of \$7,845.00 and \$4,169.00 are disallowed as not being ordinary and necessary employee expenses."

On said statement additional New York State personal income tax **was** computed based on corrected New York income determined as follows:

	<u>Federal</u>	<u>State</u>
Total New York income reported	\$20,311.00 ¹	\$18,613.00 ¹
Add: Disallowance	<u>12,014.00</u>	<u>12,014.00</u>
Total New York Income corrected	\$32,325.00	\$30,627.00

Additional tax due was computed to be \$1,170.47 for New York State and \$6.66 for New York City.

10. Based on said statement, a Notice of Deficiency was issued against petitioners on April 14, 1982, asserting additional New York State personal

¹ The \$12,014.00 **is** comprised of the total Schedule C business expenses claimed by Mr. Doorley **of** \$7,845.00 and those claimed by Mrs. Doorley **of** \$4,169.00.

income tax of \$1,170.47, plus interest of \$337.66, for a total due of \$1,508.13 for 1978. The Audit Division inadvertently failed to include in said notice petitioners' New York City liability of \$6.66 as was computed **on** the Statement of Audit Changes.

11. For New **York** State purposes petitioners reported total business income of \$18,613.00 while for Federal purposes they reported \$18,716.00. The difference of \$103.00 is petitioner Carole A. Doorley's net profit as reported **on** her Schedule C. Since the reported total business income was not adjusted by the Audit Division to include Mrs. Doorley's net profit of \$103.00, it is presumed that Mrs. Doorley's reported business income and expenses were not included **in** their total New York business income reported **on** the basis that such income was derived from sources without New York State.

12. Petitioners contend:

(a) that the notice **of** deficiency was issued **on** an arbitrary and capricious basis just prior to the expiration of the period of limitation on assessment, thus depriving petitioners of the opportunity to present substantiation for the claimed deductions;

(b) that petitioners are part **of** a large group of taxpayers who were selected for special scrutiny because their returns had been prepared by the same tax preparer; and

(c) that where petitioners do not have cancelled checks **or** other receipts for certain expenses, the Department of Taxation and Finance should allow petitioners a reasonable estimate of such expenses.

13. Petitioners submitted documentary evidence which was insufficient to show that they were engaged in business during 1978. Furthermore, they failed to substantiate the income and expenses purportedly attributable thereto.

CONCLUSIONS OF LAW

A. That the notice of deficiency was properly issued and was not arbitrary or capricious. The return was patently erroneous and the Audit Division was justified in disallowing the Schedule C expenses of petitioner John T. Doorley. The Notice of Deficiency was preceded by a Statement of Audit Changes; thus, Mr. Doorley had an opportunity to file an amended return claiming employee business expenses as adjustments on Federal Form 2106, or as itemized miscellaneous deductions, but he did not do so.

B. That the Audit Division erred in disallowing petitioner Carole A. Doorley's claimed Schedule C expense deductions since her Schedule C income and deductions were attributable to sources without New York and were not claimed on her New York State personal income tax return (see Finding of Fact "11", supra).

C. That based on the above, petitioners' total New York income and limitation percentage are properly computed as follows:

	<u>Federal</u>	<u>State</u>
Total New York income reported	\$20,311.00	\$18,613.00
Add: Disallowance	12,014.00	7,845.00
	<u>\$32,325.00</u>	<u>\$26,458.00</u>

Limitation Percentage:
 $\frac{26,458.00}{32,325.00} = 81.85\%$

D. That the fact that petitioners' return was selected for examination because of certain practices of their accountant is irrelevant. Petitioners' liability depends solely on the facts adduced herein.

E. That petitioners have not sustained their burden of proof under section 689(e) of the Tax Law to show that they were engaged in a trade or business other than as employees. Thus, expenses claimed on their Schedule C may not be deducted under section 62(1) of the Internal Revenue Code.

F. That even if petitioner John T. Doorley may have been entitled to deduct certain employee business expenses under sections 62(2) or 63(f) of the Internal Revenue Code if he had filed **form** 2106, or had claimed such expenses as miscellaneous deductions, he nevertheless failed to sustain his burden of proof under section 689(e) **of** the Tax Law to substantiate the character or, **in** many cases, the amount of the claimed business expenses.


G. That the petition of John T. Doorley and Carole A. Doorley **is** granted to the extent provided in Conclusions of Law "B" and "C", supra; that the Audit Division **is** directed to modify the Notice of Deficiency issued April 14, 1982 accordingly; and that, except as **so** granted, said petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 0 11987


PRESIDENT


COMMISSIONER


COMMISSIONER