

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

:

DAVID SAFRAN AND JILL SAFRAN

DECISION

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 Chapter 46,  
Title T of the Administrative Code of the City :  
of New York for the Year 1978.

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Petitioners, David Safran and Jill Safran, 24 Blaine Court, Staten Island,  
New York 10310, 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 Chapter 46, Title T of the Adminis-  
trative Code of the City of New York for the year 1978 (File Nos. 37569 and  
37798).

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 notices of deficiency were 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, David and **Jill** Safran, timely filed a New York State Income Tax Resident Return (with New **York** City Personal Income Tax) for the year 1973 under filing status "Harried filing separately on one Return". On said return petitioner David Safran reported his occupation to be "Psychotherapist **while** petitioner **Jill** Safran reported her occupation to be "Bookkeeping Serv".

2. Petitioner David Safran reported business income **on** his New York return of \$4,176.00. A Federal Schedule C attached to the return reported net profit **of** \$4,176.00. However, a schedule annexed thereto, which listed the items **of** income and deduction, reported net profit of \$6,329.00, computed as follows:

"Schedule C - Income From Business or Profession --  
**Consultant/Psychotherapy**

Revenues -

State <b>of</b> N.Y.	\$ 3,388.54	
Psychological Services	<u>9,171.50</u>	\$12,560

Expenses -

Professional Development Exp.	
Professional Dues	
Answering Service	180
Printing	89
Advertising	337
Rent	600
<b>Dues</b>	
Psychology Magazines	<b>131</b>
Reference Books	438
Travel (4150 mi. @ 17¢)	706
Office Expense	305
Outside Telephone	282

Meeting & Conference Exp.	2,623	
Hypnosis Course	200	
Malpractice Insurance	90	
Moving Library	<u>250</u>	
		<u>6,231</u>
		<u>\$ 6,329</u>

3. The aforementioned schedule was a photocopy of the original. On the copy submitted, the character of the items of income and deduction and the amounts attributed thereto appear in dark, legible print. Close examination of **this** schedule shows a light pencil entry amount attributed to "Professional Development Exp." of \$2,153.00. Although said amount was not included as a deduction in arriving at the net profit of \$6,329.00 shown **on** said schedule, said amount was deducted as **an** expense in computing the business income of \$4,176.00 reported to New York State. Since the Statement of Audit Changes (see Finding of Fact "**11**" infra), disallowed Mr. Safran's business expenses to the **extent of** \$6,231.00, which was the total reported **on** the aforestated schedule which reported the net profit of \$6,329.00, Mr. Safran, **in** effect, **was** allowed the expense of \$2,153.00 **for** "Professional Development **Exp.**"

4. Attached to the return was a Wage and Tax Statement issued to petitioner David Safran by the State of New York, showing \$3,388.54 in "Wages, tips, other compensation". The legend "Included in Schedule C" with an arrow pointing to said figure was stamped on the statement.

5. Petitioner Jill Safran reported business income of \$8,874.00 for 1978. A Federal Schedule C attached to the return reported the following income and expenses :

"Schedule C - Income From Business or Profession --  
Bookkeeping Service

Revenues -		
Rego Park Nursing Home - Fees	\$13,417	
North Shore Travel		
		\$13,417
Expenses -		
Telephone (\$20 x 12)	240	
Xmas Mailings	46	
Postage	52	
Hospitality at Home	820	
Travel, Cabs	426	
Auto (6200 @ 17¢)	1,054	
Auto - Depr.		
Newspapers, Magazines	305	
Promotion, Prospecting	587	
Stationery, Printing	113	
		3,543
NET INCOME		<u>\$ 9,874"</u>

6. Petitioner, Jill Safran underreported her alleged **business** income on her New York return. The schedule above reported net income of \$9,874.00. However, on her New **York** return her business income was reported **as** \$8,874.00, which amount was used in computing the deficiency.

7. Attached to the return was a Wage and Tax Statement issued to petitioner **Jill** Safran by Rego Park Nursing Home, showing \$13,416.76 in "Wages, tips, other compensation". The legend "Included in Schedule C" with an arrow pointing to said figure was stamped **on** the statement.

8. Each petitioner filed an unincorporated business tax return for 1978. Mr. Safran reported net profit **of** \$4,176.00 and a subtraction for his wages included in his Schedule C of \$3,389.00. Said balance was reduced by an allowance for taxpayer's services **of** \$157.00 and an exemption of \$5,000.00, thereby resulting in no tax liability. Petitioner Jill Safran reported net **profit of \$8,874.00 and a subtraction for her wages included in her Schedule C of \$13,417.00, yielding a net loss income from business.**

9. Petitioners claimed the standard deduction **on** their 1978 **personal**

10. 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 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.

11. On March 26, 1982, the Audit Division issued a Statement of Audit Changes to petitioners, wherein their claimed business expenses, or those which it appeared were claimed, were disallowed on the basis that:

"Business expenses claimed are not allowed as [they are] not ordinary and necessary in the production of income as a salaried employee".

12. Based on the aforesaid statement, a separate Notice of Deficiency was issued against each petitioner on April 14, 1982 as follows:

(a) To petitioner David Safran, asserting additional New York State and City personal income taxes of \$464.63, plus interest of \$134.04, for a total due of \$598.67.

(b) To petitioner Jill Safran, asserting additional New York State and City personal income taxes of \$262.94, plus interest of \$75.84, for a total due of \$338.78.

13. Petitioners submitted documentary evidence which was insufficient to show that petitioner David Safran was engaged in business as a psychotherapist or that petitioner Jill Safran was engaged in business providing a bookkeeping

service during 1978. Although petitioner Jill Safran's claimed business deductions were mostly attributable to "North **Shore** Travel", no income was reported from said business entity. Furthermore, neither petitioner submitted documentation to substantiate their claimed business income and expenses.

14. Petitioners contend:

(a) that the notices **of** deficiency were issued on an arbitrary and capricious basis just prior to the expiration of the period of limitation  $\alpha$  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.

15. The Audit Division made no claim to assert a greater deficiency than asserted in the notices of deficiency.

CONCLUSIONS OF LAW

A. That the notices of deficiency were properly issued and were not arbitrary **or** capricious. The return was patently erroneous and the Audit Division was justified in disallowing the Schedule C business deductions claimed. The notices **of** deficiency issued were each preceded by a Statement of Audit Changes; thus petitioners had an opportunity to file an amended return claiming employee business expenses as adjustments **on** Federal Form 2106, or as itemized miscellaneous deductions, but did not do so.

B. 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.

C. That section 689 of the Tax Law provides that:

"(d) Assertion of deficiency after filing petition. --

(1) Petition for redetermination of deficiency. --If a taxpayer files with the tax commission, a petition for redetermination of a deficiency, the tax commission shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section six hundred eighty-five, if claim therefor **is** asserted at or before the hearing under rules of the tax commission."

D. That section T46-189.0(d)(1) of the Administrative Code of the City of New York **is** identical in content to section 689(d)(1) of the Tax Law.

E. That since the Audit Division made no claim to increase the deficiencies for either New York State or City purposes, the State Tax Commission has no power to determine greater deficiencies than those asserted in the notices of deficiency.

F. That petitioners, David Safran and Jill Safran have failed to sustain their burden **of** proof, imposed pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that they were engaged in a trade **or** business other than as employees. Thus expenses claimed on Schedule C may not be deducted under section 62(1) of the Internal Revenue Code.

G. That even **if** petitioners David Safran and Jill Safran may have been entitled to deduct certain employee business expenses under sections 62(2) or 63(f) of the Internal Revenue Code if they had filed Form 2106, or had claimed such expenses as miscellaneous itemized deductions. they nevertheless **failed to**

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sustain their burden of proof to show that the amounts of the business deductions claimed were accurate.


H. That the petition of David Safran and **Jill** Safran **is** denied and the notices of deficiency dated April 14, 1982 are sustained together with such additional interest as may be lawfully owing.

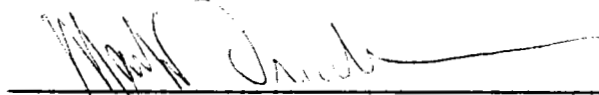
DATED: Albany, New York

STATE TAX COMMISSION

JUN 18 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER