

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

JOSEPH SALTIEL AND RENEE K. SALTIEL DECISION

for Redetermination of a Deficiency or for
Refund of New York State and New York City
Personal Income Tax under Article 22 **of** the
Tax Law and Chapter 46, Title T of the
Administrative Code of the City of New York
for the Years 1978 and 1979.

Petitioners, Joseph Saltiel and Renee K. Saltiel, 75-02 Austin Street,
#6J Forest Hills, New York 11375, filed a petition for redetermination of a
deficiency or for refund of New York State and New York City personal income
tax under Article 22 of the Tax Law and Chapter 46, Title T of the
Administrative Code of the City of New York for the years 1978 and 1979 (File
Nos. 37571 and 45354).

On October 23, 1985, petitioners waived their right to a hearing and
requested the State Tax Commission to render a decision based **on** the entire
record contained in the file, with all briefs to be submitted by October 8,
1986. After due consideration, 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 substantiated that Mr. Saltiel was engaged in a
trade or business during the years at issue.

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

FINDINGS OF FACT

1. Petitioners, Joseph Saltiel and Renee K. Saltiel, filed New York State income tax resident returns under filing status "Married filing joint return" for the years 1978 and 1979. **Mr.** Saltiel filed unincorporated business tax returns for 1978 and 1979.

2. Petitioners' tax returns were selected for examination along with those **of** approximately 100 other individuals because their returns had been prepared by a particular accountant. **An** investigation had disclosed that this accountant had consistently prepared returns on which an individual with wage or salary income shown on wage **or** tax statements had reported this 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.

3. Petitioners' 1978 State income tax return lists Mr. Saltiel's occupation as "Systems Designer" and Mrs. Saltiel's occupation as "Housewife". Mr. Saltiel reported total income of \$16,626.00, consisting of business income of \$16,578.00 and "other income" of \$48.00.

(a) On an attached Schedule C, Mr. Saltiel reported the following "Revenues" from business or profession:

Designing	\$ 2,800.00
Consulting	8,300.00
Research	<u>8,563.00</u>
	\$19,663.00

(b) The Schedule C shows the following expenses:

Magazines, newspapers, etc.	\$ 239.00
Travel (2,850 miles @ 17¢)	484.00
Briefcase & other supplies	196.00
Calculators	83.00
Bilingual services	493.00
Professional development	846.00
Hospitality	<u>744.00</u>
Total	\$3,085.00

The \$3,085.00 in total expenses deducted from total revenues of \$19,663.00 resulted in the business income reported.

(c) A wage and tax statement attached to the return shows "wages, tips, and other compensation" to Mr. Saltiel of \$19,663.11 from European American Bank and Trust Co. The statement is stamped with an arrow pointing to the compensation figure and bearing the legend "Included in Schedule C".

(d) Petitioners claimed itemized deductions of \$3,869.00.

(e) The unincorporated business tax return shows total income from business before New York modifications of \$16,575.00, less subtractions of \$19,663.00, for a total loss of \$3,085.00. The form is stamped with an arrow pointing to the figure subtracted and bearing the legend "FICA wages included in Schedule C". As Mr. Saltiel reported no taxable business income, no unincorporated business tax was shown as due.

4. On March 24, 1982, the Audit Division issued a Statement of Audit

Changes to petitioners which contained the following explanation: "Your 1978 New York State return has been corrected. Expenses claimed are not ordinary and necessary in the production of income as an employee." An additional tax due of \$338.48 was asserted on a corrected New York taxable income computed as follows:

Wages	\$19,663.11
Other income	<u>48.00</u>
Total New York income	\$19,711.11
Itemized deductions	<u>3,869.00</u>
Balance	\$15,842.11
Exemptions	<u>1,950.00</u>
New York taxable income	\$13,892.11

5. On April 14, 1982, the Audit Division issued to petitioners a Notice of Deficiency for the year 1978, asserting additional New York State and City tax due of \$338.48 plus interest, based on the computation shown on the Statement of Audit Changes. No penalty was imposed.

6. Petitioners' 1979 income tax return shows Mr. Saltiel's occupation as "Systems Designer" and Mrs. Saltiel's occupation as "Housewife". Petitioners reported total income of \$16,820.00, consisting of wages, salaries, tips, etc. of \$240.00, interest income of \$45.00, business income of \$16,487.00 and other income of \$48.00.

(a) On the attached Schedule C, Mr. Saltiel reported total income of \$21,199.00 allocated as follows:

Designing	\$4,199.00
Consulting	8,500.00
Research	8,500.00

The following business expenses were shown:

Magazines, newspapers, etc.	308.00
Travel (6,250 miles at 18.5¢)	1,156.00
Briefcase and other supplies	250.00
Bilingual services	803.00
Professional development: research	1,203.00
Hospitality	892.00
Accounting	100.00
Total	<u>\$4,712.00</u>

The \$4,712.00 in expenses were subtracted from total income, resulting in the business income reported.

(b) Two wage and tax statements were attached to the return. The first shows income to Mr. Saltiel from "wages, tips and other compensation" in the amount of \$21,198.81 from European American Bank and Trust Co. This statement also was stamped with an arrow pointing to the compensation figure and bearing the legend "Included in Schedule C". The second statement shows "wages, tips and other compensation" to Renee K. Saltiel from Sears Roebuck and Co. in the amount of \$240.00.

(c) Petitioners claimed itemized deductions of \$4,945.00.

- (d) The unincorporated business tax return shows total income from business before New York modifications of \$16,487.00, less subtractions of \$21,199.00 (also indicated as "FICA Wages Included in Schedule C"), for a net **loss** of \$4,172.00. As **no** taxable business income was shown, no tax was shown as due.

7. On February 1, 1983, the Audit Division issued to petitioners a Statement of Audit Changes, containing this explanation: "As a salaried employee, you are not a business entity and therefore are not entitled to claim Schedule C deductions. Such expenses are not ordinary and necessary for the production of income as an employee." The statement asserted additional New York State and City tax due of \$507.33 on a New York taxable income of \$14,487.00, computed by adding disallowed business expenses of \$4,712.00 to petitioners' New York taxable income as **shown** on their tax return.

8. On April 8, 1983, the Audit Division issued to petitioners a Notice of Deficiency for 1979 asserting additional New York State and City taxes due of \$507.33 plus interest. No penalties were imposed.

9. In an affidavit, Mr. Saltiel stated that the claimed business expenses were "incurred in relationship to my employment".

10. Mr. Saltiel submitted a variety of other documents:

- (a) A statement from Mr. Saltiel's employer describes his duties as the management, operation and servicing of the bank's domestic and international customers, requiring fluency in foreign languages. It further states that Mr. Saltiel was not reimbursed for travel expenses incurred going to and from the bank's headquarters and its branch offices; office supplies not issued by the bank, such as calculators or briefcases; foreign language practice expenses and publications in the area of banking and finance.
- (b) Mr. Saltiel provided no proof of actual expenditures. For each year, he submitted a "recap of business expenses" which was essentially an expanded summary of the claimed expenses. They included: newspapers, e.g., The Wall Street Journal and The New York Times; travel to and from his employer's main and

language training films; foreign language magazines; use of his home phone; and use of his home for research and development.

- (c) **Mr.** Saltiel submitted a 1979 daily diary where some of the same expenditures described above are recorded.

11. 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 limitations on assessment, thus depriving them of the opportunity to present substantiation for the claimed deductions;
- (b) that they 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 a taxpayer does not have cancelled checks or other receipts of certain expenses, the Department of Taxation and Finance should allow a reasonable estimate of expenses.

CONCLUSIONS OF LAW

A. That the notices of deficiency were properly issued and were not arbitrary or capricious. Mr. Saltiel submitted wage and tax statements showing income as an employee, yet he reported no income from wages, salaries, tips and other compensation. In addition, he submitted Federal Schedules C reporting his employee income as business income. These returns were patently erroneous, and the Audit Division was justified in making a determination of tax due based on adjustments to correct inconsistencies apparent on the face of the returns. Each Notice **of** Deficiency was preceded by a Statement of Audit Changes fully informing petitioners of the basis for the assessment and affording them the opportunity to file amended returns.

B. That the fact that petitioners' returns were selected for examination because of certain practices of their accountant is irrelevant. Their liability

C. That **Mr.** Saltiel has not sustained his burden of proof (Tax Law § 689[e]; Administrative Code § T46-189.0[e]) to show that he was engaged in a trade **or** business other than as an employee.

D. That while **Mr.** Saltiel may have been entitled to deduct certain employee business expenses under sections 62(2) **or** 162(a) of the Internal Revenue Code, he has not sustained his burden **of** proof to show that the expenses he claimed were ordinary and necessary business expenses incurred by him in connection with the performance **of** this duties **as** an employee. The evidence submitted was not sufficiently detailed to enable one to distinguish between those expenses which on their face were personal in nature (e.g. the daily purchase **of** the New York Times) and those expenses which may have had a legitimate business purpose. Furthermore, petitioners submitted no proof of actual expenditures.

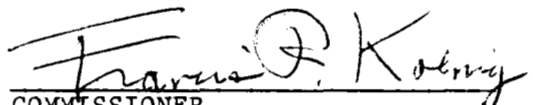
E. That the petition **of** Joseph Saltiel and Renee **K.** Saltiel **is** denied, and the notices of deficiency issued on April 14, 1982 and April 8, 1983 are sustained.

DATED: Albany, New **York**

STATE TAX COMMISSION

APR 23 1987


PRESIDENT


COMMISSIONER


COMMISSIONER