

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of :

ODED **STITT** AND MURIEL STITT

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 Nonresident Earnings Tax under Chapter :
46, Title **U** of the Administrative Code of the :
City of New York for the Years 1978 and 1979.

Petitioners, Oded Stitt and Muriel Stitt, **RFD 1** - Sabbath Day Hill Road,
South Salem, New York 10590, 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 nonresident earnings tax under Chapter **46**, Title **U** of
the Administrative Code of the City of New York for the years 1978 and 1979
(File **Nos.** 37573 and 43137).

On October **23**, 1985, petitioners, by their duly authorized representative,
Louis **F.** Brush, Esq., waived a hearing and submitted their case for decision
based upon the entire record contained in the file, together with documents to
be submitted by October 8, 1986. After due consideration, the State Tax
Commission 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 one or both of them was
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 years at issue.

FINDINGS OF FACT

1. Petitioners, Oded and Muriel Stitt, filed New York State income tax resident returns (and City of New York nonresident earnings tax returns) for 1978 and 1979. For each year, petitioners' filing status was "Married filing separately on one return".

(a)(i) On the 1978 return, petitioner Oded Stitt did not list or specify his occupation, and reported \$20,057.00 in business income. His Federal Schedule C, Form 1040, showed the following income and expenses:

Schedule C - Income From Business or Profession - Engineer

Consultation Income	\$33,977	
Interest Income	21	
Teaching Income	-	\$33,998
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Expenses:		
Books , Reference Materials	403	
Newspapers, Magazines, Etc.	391	
Meeting Expenses Re: Shipping Claims	943	
Drafting & Office Supplies	836	
Secretarial (Payments to M. Stitt \$150 x 52 wks.)	7,800*	
Cassettes, Shelves, for Note-Taking	408	
Accounting	200	
Travel to Kansas & Nevada	193	
Materials Handling Research	654	
Documentation - Complaints Answering	911	
Aviation Engineering Research	597	
Travel Exp.	605	
	<hr/>	13,941
		<hr/>
Net Income		\$20,057
		<hr/>

* Included as "Other Income" on Form 1040, Page 1, Line 30

(ii) A Wage and Tax Statement issued to petitioner Oded Stitt by

Standard Mtr. Prod., Inc., which was attached to the return, showed "Wage

tips, other compensation" of \$33,977.00. A stamped arrow with the legend "Included in Schedule C" pointed to this amount.

(iii) A 1978 unincorporated business tax return filed by Oded Stitt reported \$20,057.00 in net profit, with a "subtraction" of \$33,977.00, thus resulting in a total (and net) **loss** from business in the amount of \$13,920.00 (which amount **is** \$21.00 short of equalling the amount of alleged business expenses per Schedule C).

(iv) Petitioners itemized their deductions for 1978, but claimed **no** miscellaneous deductions as part thereof.

(b)(i) On the 1979 return, petitioner Oded Stitt stated his occupation to be "Engineer", and reported \$18,581.00 in business income. His Federal Schedule C showed the following income and expenses:

Schedule C -Income From Business or Profession - Engineer

Consultation Income	\$37,423	
Interest Income	-	
Teaching Income	-	\$37,423

Expenses :

Secretarial (Payments to M. Stitt \$150 x 52 Wks)	7,800*
Books, Reference Materials	492
Newspapers, Magazines, Etc.	431
Meeting Expenses Re: Promotions, Shipping Claims	2,447
Drafting & Office Supplies	923
Cassettes, Shelves for Note-Taking	449
Accounting	250
Travel to Kansas & Nevada	296
Materials Handling Research	793
Documentation - Complaints Answering	1,012
Aviation Engineering Research	698
Travel - Automobile 11,900 mi @ 18½¢ =	2,202
Parking & Tolls	527
.Hospitality	522

Net Income	<u>18,842</u>
	<u>\$18,581</u>

(ii) A Wage and Tax Statement issued to petitioner Oded Stitt by Standard Mtr. Prod., Inc., which was attached to the return, showed "Wages, tips, other compensation" of \$37,423.24. A stamped arrow with the legend "Included in Schedule C" pointed to said amount.

(iii) A 1979 unincorporated business tax return filed by Oded Stitt reported \$18,581.00 in net profit, with a "subtraction" of \$37,423.00, thus resulting in a total (and net) **loss** from business in the amount of \$18,842.00 (which amount equalled the amount of alleged business expenses per Schedule C).

(iv) Petitioners itemized their deductions for 1979, but claimed no miscellaneous deductions as part thereof.

2. Petitioners' tax returns were 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. Petitioner Oded Stitt's claimed Schedule C deductions were disallowed on that basis.¹

3. (a) On March 24, 1982, the Audit Division issued a Statement of Audit Changes to petitioners for 1978 on which additional New York State and City tax

¹ For each year, part of the alleged Schedule C business expenses included \$7,800.00 claimed by Oded Stitt as a secretarial expense based on monies allegedly paid to Muriel Stitt. **By its disallowance** the Audit Division

due was computed at \$781.08, based on disallowance of the claimed Schedule C business expenses for 1978. On April 14, 1982, the Audit Division issued a Notice of Deficiency to petitioners for \$781.08 in additional tax due for 1978, plus interest.

(b) On February 8, 1983, the Audit Division issued a Statement of Audit Changes to petitioners for 1979 on which additional New York State and City tax due was computed at \$1,492.12, again based on disallowance of claimed Schedule C business expenses. On April 8, 1983, the Audit Division issued a Notice of Deficiency to petitioners in the amount of \$1,492.62 in additional tax due for 1979, plus interest.

4. During the years at issue, petitioner Oded Stitt was employed by Standard Motor Products, Inc., as its Manager of Distribution Operations. He is a graduate of New York University with bachelor's degrees in arts and in engineering and a master's degree in engineering.

5. Petitioners submitted certain diaries, handwritten lists, photostatic copies of book covers listed as purchased, some cancelled credit card receipts and other receipts pertaining to the claimed business expenses for each of the years in question. The monies allegedly paid to Mrs. Stitt were not evidenced by cancelled checks. Her work duties were listed as typing, translation and phone answering. The newspapers claimed as business expenses involved daily purchases of the New York Times and Wall Street Journal. A large portion of the automobile travel expense was claimed based upon use of Oded Stitt's automobile in bringing home work materials too voluminous to fit in a briefcase and returning the same to his work location.

6. There **is** no evidence that Mr. Stitt's earnings were derived other than from his employment with Standard Motor Products, Inc. Parr **of** petitioners' submission included a letter from Oded Stitt's employer, providing as **follows**:

''[t]his will confirm that Mr. Oded Stitt, our Manager **of** Distribution Operations, incurs certain expenses during the course **of** his employment that, in accordance with corporate policy, are not reimbursed by the corporation. These expenses are necessary to maintain good customer relations with local area clients and are incurred both on and off our premises. In accordance with this policy these expenses are paid to Mr. Stitt as part of his annual compensation."

7. Petitioners maintain:

(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 petitioners of the opportunity to present substantiation ~~for~~ the claimed deductions; and

(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.

CONCLUSIONS OF LAW

A. That the notices of deficiency were properly issued and were not arbitrary or capricious. The returns were patently erroneous and the Audit Division was justified in disallowing the Schedule **C** business income and expenses. Each Notice of Deficiency was preceded by **a** Statement **of** Audit Changes and petitioners had an opportunity to file amended returns 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' returns were selected for examination because **of** certain practices **of** their accountant is irrelevant. Petitioners'

C. That petitioners have not sustained their burden of proof under section 689(e) of the Tax Law and Administrative Code § U46-39.0(e) to show that petitioner Oded Stitt was engaged in a trade **or** business other than as an employee, and thus have not proven entitlement to deduct "business expenses" as reflected per his Schedule C.

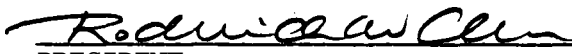
D. That while it **is** possible that petitioner Oded Stitt may have been entitled to deduct certain **of** the claimed expenses either as employee business expenses (if unreimbursed) under sections 62(2) **or** 63(f) of the Internal Revenue Code if he had filed Form **2106**, **or** as miscellaneous itemized deductions, petitioners have nevertheless failed, based on the evidence submitted, to prove entitlement to any of the items or amounts shown.

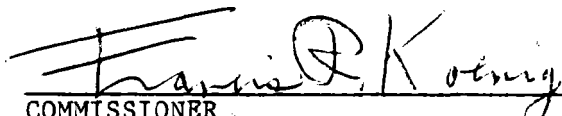
E. That the petitions **of** Oded and Muriel Stitt are denied and the notices of deficiency issued **on** April 14, 1982 and April 8, 1983 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 29 1987


PRESIDENT


COMMISSIONER


COMMISSIONER