

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions

of

JOHN MACRON AND ELIZABETH MACRON

DECISION

for Redetermination ~~of~~ Deficiencies or for
Refunds ~~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, John Macron and Elizabeth Macron, 2 Bernice Drive, Freehold Township, New Jersey 07728, filed petitions for redetermination of deficiencies ~~or~~ for refunds 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. 37754 and 45353).

On October **23**, 1985, petitioners waived a hearing before the State Tax Commission and agreed to submit the matter for decision based on 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 petitioner John Macron 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, John and Elizabeth Macron, filed joint New York State income tax nonresident returns with City of New York nonresident earnings tax for 1978 and 1979. On each return, petitioner John Macron listed his occupation as "Audio Engineering", while petitioner Elizabeth Macron listed her occupation as "Real Estate Sales". Petitioner John Macron also filed nonresident earnings tax returns for the City of New York for said years.

2. (a) For 1978:

(i) Petitioners reported New York business income of \$22,074.00.

(ii) On a Schedule C, Federal Form 1040, petitioner John Macron stated his main business activity as "Audio Communications Engin." and showed the following income and expenses:

"SCHEDULE C INCOME FROM BUSINESS OR PROFESSION AUDIO ENGINEERING

Revenues	Institutional	\$25,740	
	- Telecommunications	290	
	- Repairs & Installations	100	
	- Emergency Services	<u>1,124</u>	\$27,254

Expenses :

Newspapers, Magazines	393
Telephone - Inside	120
Outside	480
Dues, Subscriptions	410
Tools, Testers, Materials	594
Auto Travel (3,800 @ 17¢)	646
Depreciation of Equipment (Below)	230
Messengers	485
Meeting For Estimates	1,348
Trade Publications, Shows	371
Postage	<u>103</u>

5,180

SCHEDULE OF PROPERTY & DEPRECIATION

	<u>Cost</u>	<u>Depreciation</u> <u>Method</u>	Life	Prior <u>Depr. Taken</u>	1978 <u>Depr.</u>
Tek Tronics Oscilloscope	830	S.L.	5 yrs.	581	166
B & K Vectorscope	320	S.L.	5 yrs.	192	64 230"

(iii) A Wage and Tax Statement issued to petitioner John Macron by American Broadcasting Companies, Inc., which was attached to the return, showed "Wages, tips, other compensation" of \$26,864.30. A stamped arrow with the legend "Included in Schedule C" pointed to said figure. Federal, New York State and New York City income taxes and FICA tax were shown as withheld. Pension plan coverage was shown.

(iv) Petitioners itemized their deductions but claimed no miscellaneous deductions.

(v) Petitioner John Macron filed a New York State unincorporated business tax return for 1978 showing \$22,074.00 in net profit, with \$26,864.00 in subtractions, resulting in a net loss of \$4,790.00. A stamped arrow with the legend "FICA Wages Included in Schedule C" pointed to the amount of subtractions.

(vi) Petitioner John Macron's nonresident earnings tax return for the City of New York for 1978 reported \$22,074.00 in net earnings from self-employment.

(b) For 1979:

(i) Petitioners reported New York State business income of \$29,753.00.

(ii) On his Schedule C, Federal Form 1040, petitioner John Macron again stated his main business activity as "Audio Communications Engin." and

"SCHEDULE C - INCOME FROM BUSINESS OR PROFESSION - AUDIO ENGINEERING

Revenues - Institutional	\$34,914	
Telecommunications Consult.	290	
Repairs & Installations	100	
Emergency Services	<u>1,125</u>	\$36,429
Expenses :		
Newspapers	396	
Telephone - Inside - Alloc.	120	
- Outside	483	
Dues, Subscriptions	565	
Tools, Testers, Materials	594	
Auto Travel (3,840 @ 18½¢)	711	
Deprec. of Equip. (Below)	147	
Messengers	1,480	
Meeting For Estimates	1,608	
Trade Publications, Shows	377	
Postage	<u>195</u>	
		<u>6,676</u>
		<u>\$29,753</u>

SCHEDULE OF PROPERTY & DEPRECIATION

	Cost	<u>Depreciation</u> <u>Method</u>	Life	Prior <u>Depr. Taken</u>	1979 <u>Depr.</u>
Tek-Tronics- Oscilloscope	830	S.L.	5 yrs.	747	\$ 83
B & K Victorscope	320	S.L.	5 yrs.	256	64 <u>147"</u>

(iii) A Wage and Tax Statement issued to petitioner John Macron by American Broadcasting Companies, Inc., which was attached to the return, showed "Wages, tips, other compensation" of \$34,922.17. A stamped arrow with the legend "Included in Schedule C" pointed to said figure. Federal, New York State and New York City income taxes and FICA tax were shown as withheld. Pension plan coverage was shown.

(iv) Petitioners itemized their deductions but claimed no miscellaneous deductions.

in subtractions, for a net **loss** of \$5,161.00. A stamped arrow with the legend "FICA Wages Included **in** Schedule **C**" pointed to the amount of subtractions.

(vi) Petitioner John Macron's nonresident earnings tax return for the City of New York **for** 1979 reported \$29,753.00 **in** net earnings from self-employment.

3. 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 John Macron's claimed Schedule C deductions were disallowed **on** that basis.

4. (a)(i) On March 24, 1982, the Audit Division issued **a** Statement of Audit Changes to petitioners for 1978 with the following explanation:

"Deductions shown on Schedule C are disallowed since they are not considered ordinary and necessary in the production of income as an employee.--

Additional New York State personal income tax of \$530.14 was claimed to be due, with a credit of \$20.61 against New York City nonresident earnings tax, for a total due of \$509.53.

(ii) On April 14, 1982, the Audit Division issued a **Notice** of Deficiency to petitioners for \$509.53 **in** tax, plus interest.

(b)(i) On February 1, 1983, the Audit Division issued a Statement of Audit Changes to petitioners for 1979 with the following explanation:

"As a salaried employee, you are not a business entity and therefore are not entitled to claim Schedule C deductions as these expenses are not ordinary and necessary for the production of income as an employee.

The increase in Adjusted Gross Income has increased the statutory medical expense adjustment because of the percentage reduction based on adjusted **gross** income.

New York City Non-Resident earnings tax **is** corrected."

Additional New York State personal income tax of \$769.97 was claimed to be due, with a credit **of** \$23.03 in City of New York nonresident earnings tax.

(ii) On April 8, 1983, the Audit Division issued a Notice of Deficiency to petitioners in the amount of \$746.94, plus interest.

5. 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 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.

6. Petitioners offered no evidence whatsoever in support of their position.

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 Facts.

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' liability depends solely on the facts adduced herein.

C. That petitioners have not sustained their burden **of** proof under Tax Law § 689(e) and Administrative Code § U46-39.0(e) to show that petitioner John Macron was engaged in **a** trade or business other than as an employee. Thus, expenses claimed on Schedule C may not be deducted under section 62(1) **of** the Internal Revenue Code.

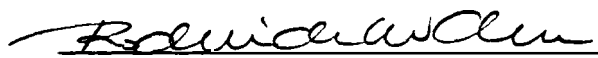
D. That while petitioner John Macron may have been entitled to deduct certain employee business expenses under sections 62(2) or 63(f) of the Internal Revenue Code if he had filed Form 2106, or had claimed such expenses as miscellaneous deductions, petitioners nevertheless failed to sustain their burden **of** proof under Tax Law § 689(e) and Administrative Code § U46-39.0(e) to show the character or, in many cases, the amount of the claimed business expenses.

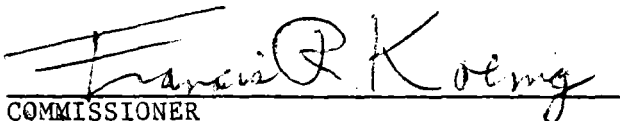
E. That the petitions of John Macron and Elizabeth Macron are denied and the notices **of** deficiency issued April 14, 1982 and April 8, 1983 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 18 1987


PRESIDENT


COMMISSIONER

