

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

SANG BOCK LEE and KILZA L. LEE

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 Year 1978.

Petitioners, Sang Bock Lee and Kilza L. Lee, 423 Manchester Way, Wyckoff, New Jersey 07481, 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 resident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1978 (File No. 38680).

A hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on March 5, 1986 at 9:30 A.M. Petitioner Sang Bock Lee appeared pro se and for his wife, Kilza L. Lee. The Audit Division appeared by John P. Dugan, Esq., (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioners substantiated certain business expenses deducted by petitioner Sang Bock Lee.

FINDINGS OF FACT

1. Petitioners, Sang Bock Lee and Kilza L. Lee, filed a New York State income tax nonresident return with City of New York nonresident earnings tax

business income had been calculated on Federal Schedule C, after deducting \$23,911.00 in business expenses from gross receipts of \$122,013.00.

2. Petitioner Sang Bock Lee is a physician and during the year at issue was a partner in the New York Anesthesiology Group ("the Partnership") located at 10 Nathan D. Perlman Place, New York, New York.

3. In a Statement of Audit Changes dated March 26, 1982, the Audit Division adjusted petitioner Sang Bock Lee's income to agree with that reported on the Federal return filed by the Partnership. The Statement of Audit Changes stated that \$3,222.27 in additional New York State tax and \$186.47 in additional New York City tax were due. On April 14, 1982, the Audit Division issued a Notice of Deficiency against petitioners for \$3,408.74 in additional tax, plus interest.

4. None of the items deducted by Dr. Lee on his schedule C were deducted by the Partnership. Accordingly, after a conference, the Audit Division allowed a portion of the claimed deductions and liability for certain other items was conceded by petitioners.

5. The items remaining at issue at the hearing were as follows:

- (a) Automobile Expense. Dr. Lee claimed \$3,225.00 in automobile expenses. At the conference he was allowed \$1,300.00, or approximately 40% business use. Dr. Lee claimed that he should be allowed the 757, which had been allowed by the Internal Revenue Service for a different year.
- (b) Dues and Publications; Medical Books. Of the \$1,815.00 claimed for dues and publication and the \$700.00 for medical books and publications, Dr. Lee was allowed \$1,300.00.
- (c) Home Office Expense. Dr. Lee claimed \$1,200.00 for "rent on business property" for an office in his home. This amount was disallowed in full.
- (d) Outside Labor Expense. Dr. Lee claimed \$1,400.00 for outside labor expense. This amount was disallowed in full.

- (e) Convention Seminar; Travel and Entertainment. Dr. Lee claimed \$1,956.00 for a convention seminar and \$2,832.00 for travel and entertainment. He was allowed a total of \$2,400.00 against these items.
- (f) Meals on Call. Dr. Lee deducted \$825.00 for meals on call. This amount was disallowed in full.

As a result of the conference, petitioners were allowed \$8,219.00 in business expenses and the tax deficiency was reduced to \$2,772.98.

6. At the hearing, petitioners substantiated that the business use of one of their two automobiles was 60%. Accordingly, the automobile expense deduction is increased to \$1,935.00 from the \$1,300.00 allowed at conference.

7. Petitioners offered no additional evidence as to the dues or publications or medical books or publications.

8. Petitioners showed that Dr. Lee devoted one room of petitioners' ten room home to a home office. The room contained medical reference books and a typewriter. Dr. Lee did not see patients at the home office.

9. At the hearing, petitioners substantiated \$800.00 in outside labor expense for payments made to physicians who covered for Dr. Lee at Beth Israel Medical Center.

10. Petitioners offered no additional evidence as to the convention seminar or travel and entertainment deductions.

11. Dr. Lee was required to remain in Beth Israel Medical Center for a period of 24 hours whenever he was on call. This took place approximately once a week. The \$825.00 in deductions for meals on call represents meal charges incurred by Dr. Lee when he was on call at Beth Israel and was required to eat his meals in the hospital cafeteria.

CONCLUSIONS OF LAW

A. That petitioners are not entitled to a refund of the tax deficiency.

cost **of** the meals constituted nondeductible personal expenses. Section 162(a) Internal Revenue Code. (~~See~~: Walter K. Liang, 34 TCM 1298; William S. Kammerer, 35 TCM 30).

B. That petitioners have sustained their burden **of** proof under section 689(e) of the Tax Law only to the extent that the automobile expense deduction is increased to \$1,935.00 and that outside labor expense is allowed in the amount **of** \$800.00. Thus, the expenses allowed at conference **of** \$8,219.00 are to be increased to \$9,654.00 and the deficiency **is** to be recomputed accordingly.

C. That the petition **of** Sang Bock Lee and Kilza L. Lee is granted to the extent indicated in Conclusion **of** Law "B" and **is** in all other respects denied. The Notice of Deficiency, **as** modified, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 03 1986

Rodrigue Arden
PRESIDENT

Francis B. Koenig
COMMISSIONER

Mark J. Jind
COMMISSIONER