

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

ARON AND KATHE FEUEREISEN

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Articles  
22 and 30 of the Tax Law for the Years 1974,  
1975 and 1976.

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Petitioners, Aron and Kathe Feuereisen, 835 **51st** Street, Brooklyn, New York 11220, filed a petition for redetermination of a deficiency or for refund of personal income tax under Articles 22 and 30 of the Tax Law for the years 1974, 1975 and 1976 (File No. 42763).

A hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 15, 1986 at 10:45 A.M. Petitioners appeared by Meissner, Tisch & Kleinberg, Esqs. (George Meissner and Donald Wall, **Esqs.**, of counsel). The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

#### ISSUE

Whether during the years in question petitioner Aron Feuereisen received but failed to report income from certain illegal activities, thus being liable for tax due on such income together with a fifty percent penalty for fraud as determined by the Audit Division.

#### FINDINGS OF FACT

1. On February 11, 1982, the Audit Division issued two notices of deficiency to petitioners Aron and Kathe Feuereisen.

years 1974, 1975 and 1976 (including New York City personal income tax for 1976) in the aggregate amount of \$780.75, plus a fifty percent fraud penalty [Tax Law §685(e)] and interest.<sup>1</sup>

2. The above deficiency is premised upon the assertion that petitioner received illegal kickbacks in the amounts of \$7,200.00 for 1974, \$6,000.00 for 1975 and \$750.00 for 1976, and intentionally failed to include such amounts as income during the years in issue.

3. Subsequent to issuance of the aforementioned notices of deficiency, petitioner made payment and hence seeks a refund **of** the amounts paid plus interest.

4. The deficiencies in question arose out of a special investigation **of** nursing homes by the New York State Attorney General's Office. More specifically, in 1979, petitioner and one Laszlo Szanto were indicted (Supreme Court, Queens County, Indictment **No.** 133-79) as co-defendants on a total of thirty counts with respect to an alleged kickback scheme at Far Rockaway Nursing Home ("Far Rockaway"). The counts **of** the indictment were as **follows**:

- conspiracy in the third degree (1 count)
- grand larceny in the second degree (1 count)
- offering a false instrument for filing in the first degree (1 count)
- falsifying business records in the first degree (11 counts)
- willful violation **of** health laws (14 counts)
- attempt to evade tax (2 counts)

5. Petitioner, Mr. Szanto and others owned **Far** Rockaway, a partnership, during the years in question. Petitioner **also** worked in the kitchen at Far Rockaway, with his sole responsibility being to assure that foods were supplied

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1 Kathere Feureisen's name appears solely by virtue of the filing of joint tax returns with Anne Feureisen.

and prepared at Far Rockaway in accordance with kosher dietary laws. Due to ongoing severe disagreements with Mr. Szanto, petitioner arranged his work schedule around Mr. Szanto's schedule such that the two rarely, if ever, were at Far Rockaway at the same time. Petitioner spent his working time at Far Rockaway in the kitchen.

6. On June 18, 1981, petitioner pleaded guilty to Conspiracy in the Sixth Degree (a Class B Misdemeanor) and to two violations of the Public Health Law (unclassified misdemeanors) in full satisfaction of the charges against him under Indictment Number 133-79. On October 23, 1981, petitioner was sentenced to a fine of \$2,500.00 in connection with the above offenses as pleaded to.

7. Petitioner's co-defendant, Mr. Szanto, has yet to be arraigned on any of the charges under the indictment, having fled the jurisdiction to avoid prosecution. He remains a fugitive from justice and is believed to have returned to his native country of Hungary.

8. The minutes of petitioner's plea allocution (Supreme Court, Queens County, Balbach J.) reveal that petitioner pleaded guilty to a violation of Penal Law section 105 by conspiring with Mr. Szanto and one Sam Froehlich, a vendor, to violate Public Health Law section 12(b)(2). Specifically, petitioner conspired with, aided and abetted Mr. Szanto in the latter's acceptance of a rebate of money (a kickback). This plea was an "Alford" plea (North Carolina v. Alford, 400 U.S. 25), a rarely accepted plea under which an accused is allowed to assert his innocence but plead guilty to avoid a trial. Here, petitioner and his wife (now deceased) were elderly and in poor health and sought to avoid the time, expense, stress and tension of a lengthy trial.

9. The minutes also reveal that, while petitioner knew of the kickback scheme, it was Mr. Szanto who received the kickback.

of the scheme, filed a false RHCF-1 (a nursing home reimbursement document filed with the State), and was the speaker on all but one of several surreptitious tape recordings made by investigators. The minutes further indicate that petitioner did not receive any kickback monies nor did he make any false entries in the books or records of Far Rockaway.

10. The amounts of tax at issue herein were computed upon alleged kickbacks to petitioner of \$7,200.00 for 1974, \$6,000.00 for 1975 and \$1,000.00 for 1976. These figures were transmitted orally to the Audit Division by the Attorney General's Office and were estimated amounts set at \$600.00 per month for 1974, \$500.00 per month for 1975 and \$1,000.00 (in total) for 1976.

11. At petitioner's sentencing, the Court (Justice Balbach) noted that "I am satisfied that the real principal in this matter is Mr. Szanto who is not before the Court." The Court also recommended that petitioner receive a certificate of relief from civil disabilities and also retain licensure as a nursing home operator.

#### CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law for the year 1976 is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Article 30.

B. That, as the facts reveal and as is consistent with the nature of petitioner's guilty plea in Supreme Court, petitioner did not receive any kickbacks of money during the years in question. Rather, petitioner admitted to knowledge of and aiding in Mr. Szanto's scheme to receive kickbacks of money from a vendor to Far Rockaway. However, since petitioner did not receive any kickbacks of money during the years in question, the issue of whether or not petitioner received any kickbacks of money during the years in question is moot.

additional funds in any of the years in question, there was no failure by petitioner to report income and pay taxes due thereon, nor any false or fraudulent filing by petitioner.

C. That the petition of Aron and Kathe Feuereisen **is** hereby granted, the notices of deficiency dated February 11, 1982 are cancelled and petitioner's claims for refund, together with such interest as is lawfully due, are granted.

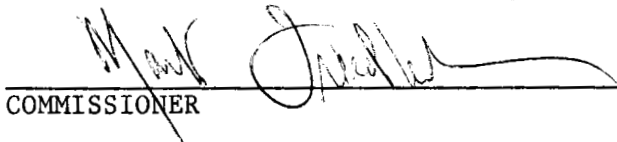
DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER