

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

EMIL J. PARASHKEVOV

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 1979.

Petitioner, Emil J. Parashkevov, 33 East Allison Avenue, Pearl River, New
York 10965, 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 year 1979 (File No. 43242).

A hearing was held before James Hoefer, Hearing Officer, at the offices of
the State Tax Commission, Two World Trade Center, New York, New York, on
December 3, 1985 at 9:50 A.M. Petitioner appeared pro se. The Audit Division
appeared by John P. Dugan, **Esq.** (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner timely filed a New York State income tax return for
the year 1979.

11. Whether petitioner **is** entitled to resident tax credits for taxes paid
to the States of California and Missouri.

111. Whether petitioner is entitled to claim a deduction of \$726.00 for
expenses allegedly related to the buying and selling of stocks.

FINDINGS OF FACT

1. On June 14, 1980, petitioner mailed to the Audit Division his New York State Income Tax Resident Return for the year 1979. The Audit Division asserted that said return could not be processed as filed and therefore returned same to petitioner via an undated letter which contained, inter alia, the following instructions:

"In order to obtain a refund of the monies withheld by the out of state employers, you must file a return with each of those respective states (Missouri & California). In addition, you must submit copies of those returns with your New York return in order to obtain credit against your New York tax for any taxes owed to Missouri and California. Only the withholding in the amounts of \$325.15 (State) and \$20.63 (City) are allowable on your New York return."

The Audit Division also requested that petitioner complete Form NYC-203, a City of New York Nonresident Earnings Tax Return, and to resubmit his return and the requested information within 10 days. Prior to March 20, 1982, the Audit Division has no record of petitioner having resubmitted his 1979 return.

2. On March 20, 1982, petitioner mailed to the Audit Division a photocopy of the 1979 New York State return which had previously been returned to him by the Audit Division. A photocopy was sent by petitioner in response to a request from the Audit Division which stated, ~~inter alia~~, that it had no record of petitioner having filed a return for 1979. The photocopy submitted by petitioner computed a New York State tax due of \$1,576.69 and claimed credit of \$1,581.27 for prepayments (\$1,560.64 for New York, California and Missouri tax withheld and \$20.63 for New York City tax withheld). No wage and tax statements were attached to the photocopy of petitioner's return. Furthermore, petitioner did not attach a 1979 New York City nonresident earnings tax return to his New York State return nor did the photocopy of his State return show any New York City tax due.

3. On September 15, 1983, the Audit Division issued a Statement of Audit Changes to petitioner for 1979 which indicated that:

"A search of our files fails to show a 1979 New York State income tax return filed under your name or social security numbers. We are therefore considering the copy you supplied as your original 1979 return.

Tax withheld by another state or taxing jurisdiction can not be allowed as a payment of New York tax.

If a New York Wage and Tax Statement is submitted, credit will be given for New York taxes withheld.

TOTAL PERSONAL INCOME TAX DUE \$1,576.69"

4. On December 16, 1982, the Audit Division issued a Notice of Deficiency to petitioner for 1979 asserting additional tax due of \$1,576.69, plus penalty¹ of \$394.17 and interest of \$464.27, for a total allegedly due of \$2,435.13. Petitioner timely filed a petition for a redetermination of the aforementioned deficiency and also for a refund of the \$4.58 overpayment shown on his 1979 return.

5. Submitted in evidence at the hearing held herein was petitioner's 1979 New York City Nonresident Earnings Tax Return. Said return was not signed by petitioner or dated. Furthermore, it showed gross wages of \$1,538.63 and a loss of \$3,294.00 from net earnings from self-employment. During the year 1979, petitioner, a nonresident of New York City, earned wages of \$4,619.35 from sources within the City. Petitioner's self-employment activities were not derived from services performed or from sources within the City.

1 The record does not specifically identify what penalty was being asserted due. However, it appears that the maximum Tax Law §685(a)(1) penalty for failure to file a tax return on time was asserted due (\$1,576.69 x 25

6. During the year 1979, petitioner earned wage income from sources within the States of California and Missouri. Petitioner filed California and Missouri individual income tax returns for 1979 and was required to pay income taxes of \$29.06 and \$466.73, respectively, to each of these states.

7. Petitioner has substantiated that \$325.15 of New York State income tax and \$20.63 of **New** York City income tax was withheld from 1979 wage income.

8. At the hearing held herein, petitioner claimed, for the first time, that he was entitled to additional deductions for expenses related to the buying and selling of stocks. In substantiation of these alleged additional deductions, petitioner submitted in evidence a worksheet which contained the following entries:

<u>"Going to Stock Broker - 1979</u>	
Wall Street Journal	\$ 91.00
Value Line	110.00
Barrons	75.00
	<u>276.00</u>
Transportation	350.00
Meals	100.00
	<u><u>\$726.00"</u></u>

Other than the handwritten worksheet, petitioner submitted no further documentation in support of these alleged deductions. Moreover, petitioner admitted, upon cross-examination, that the handwritten worksheet was prepared "Just on my way here in the bus. I put only charges that I consider reasonable and obvious."

9. On April 15, 1980, petitioner filed for and was granted an automatic two-month extension of time until June 15, 1980 within which to file his 1979 U.S. Individual Income Tax Return.

CONCLUSIONS OF LAW

A. That the 1979 New York State Income Tax Resident Return filed by petitioner on June 14, 1980, and subsequently returned to petitioner by the Audit Division as incomplete, constituted the timely filing of a return. Said return contained an error, i.e. petitioner's attempt to claim California and Missouri tax withheld as New York State tax withheld, but was not incomplete. Since petitioner had filed and received an automatic two-month extension of time to file his 1979 U.S. Individual Income Tax Return, he is automatically entitled to a similar extension for New York State and City purposes. Accordingly, the New York State return filed by petitioner on June 14, 1980 was a timely filed return and the Audit Division's assertion of a Tax Law §685(a)(1) penalty for failure to file a return on time is improper.

B. That pursuant to section 620 of the Tax Law, petitioner is entitled to a credit of \$29.06 for income taxes paid to California and a credit of \$466.73 for income taxes paid to Missouri.

C. That pursuant to Finding of Fact "7", supra, petitioner is also entitled to credit for New York State tax withheld of \$325.15 and New York City tax withheld of \$20.63.

D. That during the year 1979, petitioner earned gross wages of \$4,619.35 from New York City sources. Accordingly, petitioner's 1979 New York City nonresident earnings tax liability is to be computed based on gross wages of \$4,619.35 less the allowable exclusion of \$3,000.00 (New York City Administrative Code §U46-2.0).

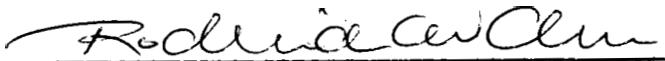
E. That petitioner has failed to sustain his burden of proof pursuant to Tax Law §689(e) to show that he is entitled to additional deductions totalling \$726.00 for expenses allegedly related to the buying and selling of stocks

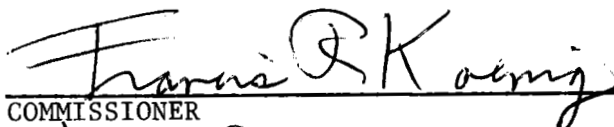
F. That the petition of Emil J. Parashkevov is granted to the extent indicated in Conclusions of Law "A", "B" and "C", supra; that the Audit Division is directed to recompute the Notice of Deficiency dated December 16, 1982 consistent with the conclusions rendered herein; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 12 1986


PRESIDENT


COMMISSIONER


COMMISSIONER