

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

WALTER AND CORINNE WOLF

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 Personal Income Tax under Chapter 46, Title T of the Administrative Code of the City of New York for the Year 1979.

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Petitioners, Walter and Corinne Wolf, 3044 Ocean Avenue, Brooklyn, New York 11235, 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 personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1979 (File No. 43647).

A formal hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1985 at 9:15 A.M., with all evidence to be submitted by November 25, 1985. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

#### ISSUE

Whether adjustments attributing additional unreported income to petitioners for the year 1979 were proper.

#### FINDINGS OF FACT

1. On January 26, 1983, the Audit Division issued to petitioners, Walter and Corinne Wolf, a Notice of Deficiency for additional personal income tax due

for the year 1979 in the amount of \$4,309.00, together with interest and penalty of \$1,548.77, for a balance due of \$5,857.77.

2. The Notice of Deficiency was based on a review of an audit of petitioners' personal income tax returns for the years 1978 and 1979. This audit had resulted in an assertion of a deficiency against said petitioners which **was** consented to on December 4, 1981 and paid in full on December 30, 1981. Subsequent to the completion of the audit and also subsequent to petitioners' payment of the deficiency resulting therefrom, the Audit Quality Control Section of the Audit Division reviewed the auditor's workpapers relating to the audit and found certain discrepancies which had resulted in an improper calculation of the deficiency. These discrepancies formed the basis of the Statement of Audit Changes dated October 7, 1982 and the Notice of Deficiency dated January 26, 1983.

3. **In** addition, in its answer dated January 14, 1985 and at hearing, the Audit Division asserted increased personal income tax deficiencies against petitioners for the year 1979. The first of these increased deficiencies was based on a review of the corrections made by the Audit Quality Control Section and amounts to an additional deficiency of \$3,309.00 plus interest.

4. The second of the increased deficiencies was based on an Internal Revenue Service audit report which disclosed unreported interest income earned by petitioners for the year 1979 resulting in a deficiency of \$2,139.00 plus interest. Taken together, the total deficiency asserted by the Audit Division in its answer and at the hearing amounts to \$9,757.00 plus interest and penalties

5. In its original audit of petitioners, the adjustments for additional income required in 1979 were determined by the cash availability analysis method of income reconstruction as follows:

Total Requirements	\$133,426
Total Sources	<u>73,451</u>
Short (Over)	\$ 59,975
Cash Living Expenses	<u>7,260</u>
Additional Funds	\$ 67,235
Additional Withdrawals	<u>41,694</u>
Final Additional Funds	\$ 25,541

As stated previously, petitioners made payment in full of the deficiency resulting therefrom.

6. Upon review of the audit by the Audit Quality Control Section, a discrepancy was discovered with respect to the auditor's allowance of additional withdrawals in the amount of \$41,694.00. These withdrawals were associated with petitioners' savings account #7-6413 at Greenpoint Savings Bank, Brooklyn, New York. The analysis of this account revealed the following:

Total Withdrawals	\$93,602
Less transfers to checking account #37-455-092	<u>69,450</u>
Balance	\$24,152
Less withdrawals under \$500	<u>5,161</u>
Amount available to be considered additional withdrawals	\$18,991
Additional withdrawals allowed	<u>41,694</u>
Difference	\$22,703

The difference of \$22,703.00 was classified as additional funds required.

7. In addition to the discrepancy set forth above, two other minor discrepancies were discovered by the Quality Control Section resulting in a total of \$23,617.00 in additional funds required. Based on this figure, the Notice of Deficiency at issue herein was issued to petitioners.

8. Subsequent to the issuance of the Notice of Deficiency, the Audit Division reviewed the Audit Quality Control Section's corrections and reclassified the additional withdrawal figure of \$41,694.00 as required funds as well as a

source of funds. The net result of this reclassification under the cash availability method was to increase petitioners' additional funds required per the Quality Control Section by \$18,991.00 computed as follows:

Requirements per Quality Control	\$134,126	
Additional requirements per Audit Division (based on review of Quality Control)	41,694	
Living expenses	<u>7,260</u>	
Corrected Total Requirements		\$183,080
 Sources per Quality Control	 \$ 92,228	
Additional sources per Audit Division (based on review of Quality Control)	<u>22,703</u>	
 Corrected Total Sources		 \$114,931
 Corrected Additional Funds per Audit Division		 \$ 68,149
Less: Additional funds required per Quality Control		23,617
Additional funds required per audit		<u>\$ 25,541</u>
 Difference		 \$ 18,991

9. At hearing, the Audit Division's witness, Diane Urban, testified that the Audit Division had revised the corrections made by Quality Control based on a notation in the original auditor's workpapers which stated that the \$41,694.00 had been withdrawn for gambling purposes. It was reasoned that if such funds had been withdrawn for gambling purposes and had been "gambled away", then the \$41,694.00 should have been included as a requirement as well as a source of funds.

10. Petitioners denied that they had engaged in any gambling activity during the period at issue.

11. Petitioners had over 30 bank accounts, held both individually and jointly, during the period at issue with numerous transfers of funds between accounts. At hearing and in a letter submitted subsequent to the hearing, petitioners stated that the Audit Division had not properly credited petitioners

for certain transfers of funds between their various accounts. The auditor's analysis of petitioners' accounts had revealed \$89,083.00 of transfers of funds between accounts. A review of the auditor's workpapers at the hearing by the Audit Division's witness, in light of petitioners' claims, revealed \$236.00 in additional transfers between petitioners' accounts which had not been considered by the Audit Division in their determination of the deficiency asserted in the Notice of Deficiency at issue herein.

12. **An** analysis of the auditor's workpapers revealed that all other transfer claimed by petitioners at the hearing and in their letter submitted subsequent to the hearing were considered in the auditor's calculations.

13. Petitioners also claimed certain depreciation allowances and tax credits not previously claimed with respect to their **1979** returns. Petitioners submitted no credible evidence in support of these claims.

14. With respect to the Audit Division's assertion of an additional deficiency based on an Internal Revenue Service audit report, **Mrs.** Wolf stated at hearing that she and her husband did earn the income attributed to them in that audit report.

#### CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law provides, in pertinent part:

"(e) Burden of proof. -- In any case before the tax commission under this article, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the tax commission:

\* \* \*

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed..."

B. That based on the above-referenced statute, petitioners have the

Deficiency dated January 26, 1983. Also, based on the same statute, the Audit Division has the burden of proof with respect to the additional deficiencies asserted in their answer and at the hearing.

C. That with the exception of the adjustments set forth in Finding of Fact "11", petitioners have failed to sustain their burden of proof to show that the adjustments made by the Audit Quality Control Section and the deficiency resulting therefrom as asserted by the Audit Division were erroneous or improper.

D. That in view of petitioners' admission in Finding of Fact "14", the Audit Division has met its burden of proof with respect to the additional deficiency based on the Internal Revenue Service report as set forth in Finding of Fact "4".

E. That inasmuch as the Audit Division has failed to substantiate the existence of gambling activities on the part of petitioners, the Audit Division has not met its burden of proof with respect to the additional deficiency set forth in Finding of Fact "3".

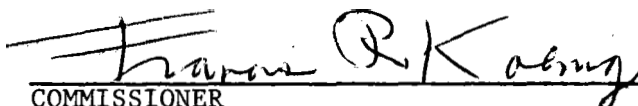
F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated January 26, 1983 so as to be consistent with Finding of Fact "11" and Conclusions of Law "D" and "E", and that, except as so modified, the petition of Walter and Corinne Wolf is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

**MAY 28 1986**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER