

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

COOK FAFINSKI AND BARBARA FAFINSKI

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article  
**22** of the Tax Law for the Year 1979.

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Petitioners Cook Fafinski and Barbara Fafinski, 12 Bridle Path Lane, Old Westbury, New York 11568, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1979 (File Nos. 44001 & 44661).

A hearing was commenced before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 15, 1986 at 9:30 A.M. and continued to conclusion on May 4, 1987 at 3:30 P.M., with all briefs to be submitted by August 4, 1987. Petitioners appeared by John A. Sotirakis, Esq. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether petitioners can properly substantiate itemized deductions and Schedule C deductions claimed on their amended returns.

FINDINGS OF FACT

1. Petitioners, Cook and Barbara Fafinski, each filed a New York State Income Tax Resident Return, Form IT-200, for the year 1979. On Mr. Fafinski's return he reported his occupation as "Minister, Agent" and his filing status

(which was handwritten in) as "Married but filing as Agent & Minister of Freedom Church of Revelation". Such return indicated that Mr. Fafinski derived salary and/or wage income totaling \$201,055.66, which he claimed was exempt from taxation because such income was earned as an agent of the aforesaid church under a vow a poverty. Accordingly, no tax liability was reported and petitioner requested a refund of \$3,532.00, which was the amount he purportedly paid as estimated tax. On Mrs. Fafinski's return she reported salary and/or wage income of \$10,000.00 derived from her occupation reported as "Bookkeeper & Minister". As was the case with Mr. Fafinski, she claimed an identical filing status and reported no tax liability based on her claim that such income was exempt because it was earned by her as a minister of the aforesaid church under a vow of poverty. Accordingly, she claimed a refund identical to that claimed by Mr. Fafinski of \$3,532.00, which was the amount purportedly paid by her as estimated tax.

2. On January 28, 1983, the Audit Division issued a separate Statement of Audit Changes to each petitioner whereon certain adjustments were made which were explained on each statement as follows:

"Your income is considered taxable based on Revenue Ruling 77-290.

Increased income disqualifies you from using short form IT-200. Therefore, your corrected tax has been computed using the IT-201 tax rate schedule.

Estimated tax payments and/or credits do not agree with your estimated tax account.

Penalty pursuant to section 685(a)(1) is imposed for failure to file a return on or before due date.

Penalty pursuant to section 685(a)(2) is imposed for failure to pay your tax when due."

3. The Statement of Audit Changes issued to Mr. Fafinski allowed credit for estimated tax payments of \$1,957.00. The Statement of Audit Changes issued to Mrs. Fafinski allowed no credit for estimated tax payments.

4. Based on said statements, the Audit Division issued two notices of deficiency against petitioners on April 8, 1983. One notice, which was issued against both petitioners, asserted personal income tax due of \$24,274.79, plus penalties of \$9,831.29 and interest of \$8,068.93, for a total due of \$42,175.01. The other notice, which was issued solely against Mrs. Fafinski, asserted personal income tax due of \$429.00, plus penalties of \$173.75 and interest of \$142.59, for a total due of \$745.34.

5. In May 1983, petitioners each filed separate petitions whereon the grounds upon which relief was claimed and the facts relied upon in making the claim were that they filed an amended return on April 14, 1983 whereon they claimed a charitable contribution deduction of 50 percent of their adjusted gross income pursuant to section 170 of the Internal Revenue Code and section 615 of the Tax Law for contributions made to a recognized exempt organization under section 501(c) of the Internal Revenue Code. Said petitions also contained the following statements to the effect that:

a - the petitioners are willing to pay the tax and interest based on the aforesaid amended return.

b - the petitioners had relied on the professional opinion of an attorney and an accountant in the preparation of their original returns. Accordingly, no penalties should be levied.

6. The aforesaid amended return, form IT-201, was received by the Audit Services Bureau on November 15, 1983. Said return was filed under filing status "Married filing separately on ~~one~~ return". On said return itemized

deductions were claimed which included a deduction for charitable contributions of \$55,650.00. Total New York itemized deductions were reported as \$70,783.00. Said return showed a refund-due of \$161.00. Prior to this filing, itemized deductions were not claimed by petitioners during the year at issue.

7. Said amended return reported total income for Mr. Fafinski of \$98,776.00. Such amount was purportedly comprised of business income of \$99,156.00, interest income of \$1,420.00, less adjustments to income of \$1,800.00.

8. The amended return reported total income for Mrs. Fafinski of \$13,421.00. Such amount was purportedly comprised of wage income of \$12,000.00 and interest income of \$1,421.00.

9. As part of petitioners' amended return, Mr. Fafinski submitted a copy of his Federal Schedule C whereon he reported total income from his insurance business of \$207,079.00, less total deductions of \$107,923.00, for a net profit of \$99,156.00.

10. On January 11, 1984, petitioners filed a "2nd Amended Return", whereon the deduction for charitable contributions was reduced from \$55,650.00 to \$6,500.00. Business income was reduced from \$99,156.00 to \$97,407.00. Said reduction was due to an increase of \$474.00 in office supplies and a deduction for bad debts of \$1,275.00. According to the "2nd Amended Return" petitioners owed a total balance due of \$5,475.00 after reducing the total tax liability by claimed estimated tax payments of \$3,532.00.

11. Petitioners, through their amended returns, have abandoned their original position that their income was exempt since they were each a minister operating under a vow of poverty. Accordingly, the sole remaining issue herein

is whether petitioners can substantiate that they are properly entitled to the itemized deductions and Schedule C deductions as claimed on their amended returns.

12. Petitioners submitted documentation dated April 4, 1986 evidencing that the Internal Revenue Service was then auditing their 1979 Federal return. They claimed that the IRS was in possession of all of petitioners' relevant books and records. Since the Audit Division indicated that it would probably accept the Federal findings, the hearing was temporarily adjourned and subsequently continued almost a year later, on May 4, 1987.

13. At the May 4, 1987 continuance petitioners alleged that the Internal Revenue Service was on the verge of rendering a decision with respect to taxable year 1979.

14. Based on the aforesaid allegation, petitioners were allowed three months, until August 4, 1987, within which to submit a copy of the final Federal determination. Although sufficient time was allowed for this purpose, no such documentation was forthcoming.

#### CONCLUSIONS OF LAW

A. That petitioners have failed to sustain their burden of proof, as provided under Tax Law § 689(e), to show that they are properly entitled to claim any itemized deductions or Schedule C deductions for 1979. Accordingly, no such deductions can be allowed.

B. That the Notice of Deficiency issued against both petitioners is to be cancelled with respect to Mrs. Fafinski since the computations and taxes asserted thereon pertain solely to Mr. Fafinski.

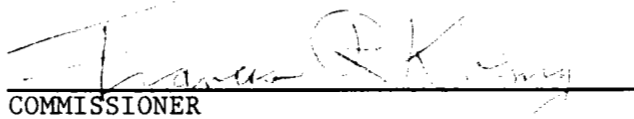
C. That except as noted in Conclusion of Law "B", supra, the petition of Cook and Barbara Fafinski is denied and the two notices of deficiency issued April 8, 1983 are sustained together with such additional penalty and interest as may lawfully be owing.

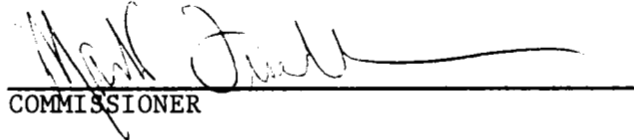
DATED: Albany, New York

STATE TAX COMMISSION

AUG 3 1 1987.

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER