

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ESFANDIR JAVADI (Deceased) AND KHANOM JAVADI

DECISION

for Redetermination of a Deficiency or for Refund of New York State Personal Income and Unincorporated Business Taxes under Articles 22 and 23 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 Years 1979 and 1980.

Petitioners, Esfandir Javadi (Deceased) and Khanom Javadi, 1077 River Road, Edgewater, New York Jersey 07020, filed a petition for redetermination of a deficiency or for refund of New York State personal income and unincorporated business taxes under Articles 22 and 23 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 years 1979 and 1980 (File No. 44717).

A 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 December 19, 1985 at 9:15 A.M., with all briefs to be submitted by January 19, 1986. Petitioners appeared by Moe D. Karash, Esq. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether, as the result of a field audit, adjustments attributing additional income to petitioners for each of the years 1979 and 1980 were proper.

FINDINGS OF FACT

1. Petitioners, Esfandir Javadi and Khanom Javadi, timely filed a joint

whereon petitioner Khanom Javadi reported business income of \$4,705.00 and \$8,659.00, respectively, derived from her "taxi service" activities.

2. On January 17, 1982, the Audit Division issued a Statement of Personal Income Tax Audit Changes to petitioners wherein adjustments were made attributing additional personal income to petitioners of \$39,897.00 for 1979 and \$31,518.00 for 1980. Said adjustments were the result of a cash availability audit. Additionally, a Statement of Unincorporated Business Tax Audit Changes was issued to petitioner Khanom Javadi on January 25, 1983 incorporating the aforesaid adjustments. Said statement also showed an adjustment for a gain derived from the sale of a taxi during 1979 of \$11,500.00. This adjustment was not contested by petitioners. Accordingly, a Notice of Deficiency was issued against petitioners on April 14, 1983 asserting New York State personal income tax and New **York** City nonresident earnings tax for 1979 and 1980 of \$7,851.00, unincorporated business tax for said years of \$3,282.00, penalty of \$835.20 and interest of \$4,907.75, for a total due of \$16,875.95. The hearing record provides no indication of the nature of the penalty asserted. Penalties were not incorporated into the statements of audit changes.

3. The adjustments for additional income were computed in a source and application of funds schedule as follows:

<u>Sources</u>	<u>1979</u>	<u>1980</u>
Business Income Sch "C" Net	\$ 4,705	\$ 8,659
Sales of Cab	65,000	-0-
Sales of Rug	5,300	-0-
Sales of Rug	5,000	-0-
Received From Iran	9,013	
Disability Income	3,828	5,172
Rent	3,600	9,500
Depreciation	693	1,885
Drawings Net of Deposits	7,653	-0-
Sale of House Per Return	-0-	30,070
Expenses Paid by Cash	-0-	4,217

Applications

Checking: Cancelled Checks	\$ 47,400	\$ 82,847
Cost of House	70,752	-0-
Operating Cost on the house	4,117	-0-
Cost of Living	22,420	24,620
Deposits over Withdrawals	<u>-0-</u>	<u>6,554</u>
Total Applications	\$144,689	\$114,021
Additional Income	<u>\$ 39,897</u>	<u>\$31,518</u>

4. The amounts determined for "Cost of Living," which were estimated by the auditor, were comprised of the following cash expenses:

	<u>1979</u>	<u>1980</u>
Food	\$ 9,100	\$ 9,600
Outside Meals	1,000	1,140
Clothing	1,500	1,600
Gasoline & Transportation	1,720	1,780
Education	3,600	4,000
Home Furnishings	3,000	4,000
Personal	1,000	1,000
Gifts	1,500	1,500
Total	<u>\$22,420</u>	<u>\$24,620</u>

The aforementioned estimates were based on a family consisting of five (5) persons.

5. At a pre-hearing conference, petitioners submitted additional information and substantiation which resulted in the following revisions to the source and application of funds schedule:

<u>Sources</u>	<u>1979</u>	<u>1980</u>
Insurance & taxes paid by check and depreciation	\$ 2,925	\$ 1,266
Money received from Iran	(9,013)	9,013
Depreciation previously allowed as a source	(693)	-0-
Net increase (decrease) in sources	<u>(\$ 5,395)</u>	<u>\$10,279</u>
<u>Applications</u>		
Cost of house (duplicate of cancelled checks)	(\$13,121)	-0-
Operating cost of house	(4,117)	-0-
Deposits over withdrawals		(\$ 1,000)
Net increase (decrease) in applications	<u>(\$17,238)</u>	<u>(\$ 1,000)</u>

6. The aforestated pre-hearing conference revisions were accepted by the Audit Division. Accordingly, the adjustments for additional income pursuant to said schedule were reduced to \$28,054.00 for 1979 and \$20,239.00 for 1980.

7. The above schedule contains a mathematical error with respect to taxable year 1979. The revision for "depreciation previously allowed as a source" of (\$693.00) was added rather than subtracted in computing the net decrease in sources of (\$5,395.00). Accordingly, the aforestated accepted revisions for 1979 properly compute to an amount for "net decrease to adjustment for additional income" for said year of \$10,457.00 rather than \$11,843.00. Therefore, additional income for 1979, based on the pre-hearing conference, is actually \$29,440.00 rather than \$28,054.00.

8. Prior to 1979, petitioner Khanom Javadi owned two (2) taxi medallions. During 1979, one medallion was sold. The gain derived from such sale was reported on petitioners' return. The remaining taxi was leased to and driven by a nonrelated person during 1979 and 1980. During said years, petitioner Esfandir Javadi was ill. Neither he nor Mrs. Javadi drove either taxicab during the years at issue. In May, 1982, Mr. Javadi died.

9. Petitioners alleged that they are properly entitled to credits for additional sources of nontaxable income during 1979 and 1980 as follows:

(a) Gift from father-in-law in January, 1979 of \$3,000.00. In support of this item, petitioners submitted what amounts to almost totally illegible copies of a check from Iran for said amount and a deposit slip dated February, 1979, purporting to show petitioners' deposit of said amount into their checking account. The payee on said check could not be determined from the copy. Furthermore, since only the cancelled check, exclusive of

the bank statements, are part of the record, an actual deposit of the \$3,000.00 is not verifiable.

(b) Receipt of approximately \$24,000.00 in 1979 from Mrs. Javadi's nephew (who resided in her household) and brother. Said funds were purportedly given to petitioners to pay for the nephew's support and education. In support of this claim, petitioners submitted a copy of a savings account passbook in the names of "Hassan Hassanzadeh or Houshang Hassanzadeh" (Mrs. Javadi's brother and nephew, respectively). The address reported on said passbook was that of petitioners. Said account shows over \$24,000.00 in withdrawals during 1979. Petitioners alleged that said withdrawals were given to them in cash. There is no record of transfers of such amounts withdrawn to petitioners' accounts. Furthermore, there **is** no documentation that such funds were in fact given to petitioners.

(c) Receipt of cash of \$5,300.00 in 1979 and \$10,000.00 in 1980 from petitioners' daughter, Rana, who visited them from Iran during two separate monthly periods in 1979 and during a couple of months in 1980. Said amounts were purportedly given to pay for her living and other expenses while staying with her parents. No documentation was submitted to evidence such alleged transfers of funds.

10. In addition to those stated above, petitioners claimed they are properly entitled to credit for various other sources of funds, none of which were traceable, documented or verified.

11. Petitioners submitted evidence establishing that they are entitled to an additional source of funds of \$1,226.00 for 1980. Said amount **was** received from a friend as reimbursement for automobile loan payments Mr. Javadi made on

his friend's behalf. Mr. Javadi's checks written for this purpose were included as an application of funds in 1980.

12. During the years 1979 and 1980, petitioners' household consisted of three persons, the petitioners and Mrs. Javadi's nephew, who resided there on a full-time basis. Their daughter visited them during both years, but she stayed a total of two or three months during each year. Their daughter's husband visited for a one month period during 1979.

13. During the hearing, evidence was presented to establish that several of the cash expenditures incorporated into the Audit Division's cost of living schedule were overstated.

CONCLUSIONS OF LAW

A. That as the result of the pre-hearing conference, the additional income computed for 1979 should properly have been stated as \$29,440.00, rather than \$28,054.00, based on the mathematical error made in computing same (see Finding of Fact "7", supra).

B. That petitioners are properly entitled to credit for an additional nontaxable source of funds for 1980 of \$1,226.00 (see Finding of fact "11", supra).

C. That based on the evidence presented, the cost of living determined for each year at issue is reduced to \$11,300.00.

D. That the penalty asserted on the Notice of Deficiency issued April 14, 1983 of \$835.20 is cancelled since the hearing record shows no indication of the nature of or reason for assertion of penalty.

E. That the petition of Esfandir Javadi and Khanom Javadi is granted only to the extent of Conclusions of Law "B", "C" and "D", supra; that the Audit Division

is hereby directed to modify the Notice of Deficiency issued April 14, 1983 to be consistent with the decision rendered herein.

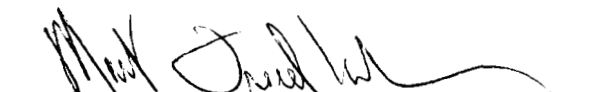
DATED: Albany, New York

STATE TAX COMMISSION

JUN 30 1986


PRESIDENT


COMMISSIONER


COMMISSIONER