

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

ROBERT KENNEDY

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Years 1976 and 1977.

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Petitioner, Robert Kennedy, 101 Scarborough Road, Briarcliff Manor, New York 10510, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1976 and 1977 (File No. 44821).

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 November 21, 1985 at 1:15 P.M. Petitioner appeared by Robert A. Gomez. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether an adjustment attributing additional income to petitioner for each of the years 1976 and 1977, based on a field audit incorporating the cash availability analysis method of income reconstruction, was proper.

FINDINGS OF FACT

1. On December 24, 1982, the Audit Division issued a Statement of Personal Income Tax Audit Changes to Robert Kennedy (hereinafter "petitioner") whereon the following adjustments were made based on the results of a field audit using the cash availability analysis method of income reconstruction:

<u>Adjustments</u>	<u>1976</u>	<u>1977</u>
Additional income per audit	\$10,066.88	\$3,971.90
Additional exemption		(1,300.00)
Net Adjustment	<u>\$10,066.88</u>	<u>\$2,671.90</u>

2. Petitioner executed three **(3)** consecutive consent forms which ultimately extended the period of limitations on assessment for the taxable years ended December 31, 1976 and December **31**, 1977 to any time on or before April 15, 1983.

3. On March **30**, 1983, the Audit Division issued a Notice of Deficiency against petitioner asserting additional 1976 and 1977 personal income tax of \$1,948.58, plus interest of \$1,106.12, for a total due of \$3,054.70.

4. Amounts for "cost of living" of \$65,478.53 (1976) and \$66,402.66 (1977) were incorporated into the cash availability analysis computed each year as part of "total cash out". For each year at issue, the cost of living was comprised of several categories of cash expenditures, including food. **The** amount applied to food was estimated to be \$10,608.00 for each year at issue. Said estimate was arrived at using \$17.00 per person per week for twelve persons, as a basis. In addition to the aforestated estimated cash food expenditures, the Audit Division's workpapers for 1976 show that petitioner made food purchases by check during said year totalling \$7,037.00.

5. Five (5) of petitioner's children resided at **the** Briarcliff Manor residence for only a portion of the years at issue herein as follows:

a - Robert C. Kennedy attended the University of Vermont and was away from the family household for nine (9) months during 1976 and **six** (6) months during 1977.

b - Marjorie K. Kennedy attended Cornell University and was away from the family household for four (4) months during 1976 and nine (9) months during 1977.

c - James L. Kennedy attended Cornell University and was away from the family household for nine (9) months during 1976 and nine (9) months during 1977.

d - Elizabeth Kennedy attended Villanova University and was away from the family household for approximately nine (9) months during 1976 and nine (9) months during 1977.

e - John Kennedy worked on a farm in Vermont during the entire taxable year 1977.

6. According to tax returns and wage and **tax** statements submitted, the five aforesated children earned an aggregate net income (as reduced by taxes withheld) of \$5,390.81 in 1976 and \$3,789.99 in 1977.

7. Several of the children attending college participated in work-study programs which provided them with additional income for food. One child, James L. Kennedy, participated in a food program while attending college on a football scholarship.

8. Petitioner contended that part of the children's income was contributed to the household and should properly be considered as an additional source of income. No evidence was submitted to support this contention and **no** specific amount purportedly contributed to the household was provided. He further contended that the Audit Division's estimate of food expenses paid in cash was overstated considering the fact that five (5) of his children did not reside at the family residence for a portion of the years at issue.

CONCLUSIONS OF LAW

A. That the Audit Division's estimate for cash food expenditures is overstated in the cost of living schedule considering the fact that five (5) of petitioner's children were not members of the household during a portion of the years at issue. Accordingly, the cash food expenditures should properly be determined as follows:

1976 and 1977 Food Expenditures Paid in Cash

	<u>1976</u>	<u>1977</u>
a - \$17.00 x seven (7) members of household x 52 weeks =	\$6,188.00	\$6,188.00
b - <u>Food applicable to Robert C. Kennedy</u> \$17.00 x 12 weeks =	204.00	
\$17.00 x 26 weeks =		442.00
c - <u>Food applicable to Marjorie K. Kennedy</u> \$17.00 x 32 weeks =	544.00	
\$17.00 x 12 weeks =		204.00
d - <u>Food applicable to James L. Kennedy</u> \$17.00 x 12 weeks =	204.00	
\$17.00 x 12 weeks =		204.00
e - <u>Food applicable to Elizabeth Kennedy</u> \$17.00 x 12 weeks =	204.00	
\$17.00 x 12 weeks =		204.00
f - <u>Food applicable to John Kennedy</u> \$17.00 x 52 weeks =	884.00	
\$17.00 x no weeks =		0
1976 and 1977 food expenditures in cash	<u>\$8,228.00</u>	<u>\$7,242.00</u>

B. That the estimate determined by the Audit Division for food expenses paid in cash of \$10,608.00 for each year at issue is reduced to \$8,228.00 for 1976 and \$7,242.00 for 1977. Accordingly, the adjustments for "additional income per audit" are reduced from \$10,066.88 to \$7,686.88 for 1976 and from \$3,971.90 to \$605.90 for 1977.

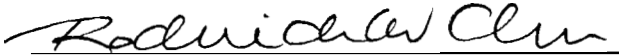
C. That the petition of Robert Kennedy is granted to the extent provided in Conclusions of Law "A" and "B", supra, and except as so granted, said petition is in all other respects denied.

D. That the Notice of Deficiency issued March 30, **1983** is to be modified so as to be consistent with the decision rendered herein.

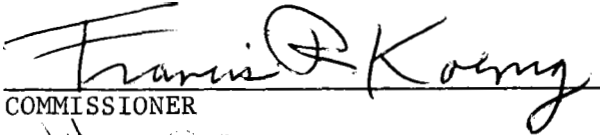
DATED: Albany, New York

STATE TAX COMMISSION

APR 04 1986



PRESIDENT



COMMISSIONER



COMMISSIONER