

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

MAHMOUD H. FARRAJ and ZAHIAH FARRAJ

DECISION

for Redetermination of a Deficiency or for
Refund of New York State Personnal Income and
Unincorporated Business Taxes under Articles 22 :
and 23 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 Years 1980 and 1981.

Petitioners, Mahmoud H. Farraj and Zahiah Farraj, 506 6th Avenue, Brooklyn, New York 11215, 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 personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1980 and 1981 (File No. 47891).

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 August 22, 1985 at 9:30 A.M. Petitioner appeared by Marvin Smith and Michael Smith. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether adjustments attributing additional unreported income to petitioners for the years 1980 and 1981 were proper.

FINDINGS OF FACT

1. Mahmoud H. Farraj and Zahiah Farraj filed a New York State Income Tax Resident Return (with City of New York Personal Income Tax) for the years 1980 and 1981.

years 1980 and 1981 under filing status "married filing separately on one return". On each return, Mahmoud H. Farraj (hereinafter "petitioner") reported his occupation as "grocer". Mrs. Farraj reported her occupation as "H/W", (which is assumed to designate housewife). Petitioner filed a New York State Unincorporated Business Tax Return for 1980. For taxable year 1981 he did not file an unincorporated business tax return.

2. On July 16, 1983, the Audit Division issued a Statement of Personal Income Tax Audit Changes to petitioner wherein the following adjustments were made :

<u>EXPLANATION</u>	<u>1980</u>	<u>1981</u>
Additional Income Required per Audit	\$ 8,210.00	\$4,437.00
Unreported Interest Income	5,142.00	
Additional Personal Exemption Not Reported		(\$750.00)
NET ADJUSTMENT	<u>\$13,352.00</u>	<u>\$3,687.00</u>

3. On July 16, 1983, the Audit Division also issued a Statement of Unincorporated Business Tax Audit Changes to petitioner for the year 1980 wherein an adjustment was made increasing petitioner's reported taxable business income by the \$8,210.00 adjustment for additional income required.

4. On October 5, 1983, the Audit Division issued two (2) notices of deficiency. Although the adjustments resulting in such deficiencies were attributed solely to petitioner, said deficiencies were issued against both him and his wife. One notice asserted additional New York State and New York City personal income taxes for 1980 and 1981 of \$2,456.00, a penalty of \$122.80, plus interest of \$652.14, for a total due of \$3,230.94. The other notice asserted additional New York State unincorporated business tax for 1980 of \$316.00, a penalty of \$15.80, plus interest of \$92.39, for a total due of \$424.19.

asserted pursuant to section 685(a)(1) of the Tax Law for failure ~~to~~ file the returns at issue.

5. Petitioner conceded the 1980 adjustment for unreported interest income. Accordingly, the only remaining issue is with respect to the adjustments for additional income required.

6. The adjustments for additional income required were determined by the cash availability analysis method of income reconstruction as follows:

	<u>1980</u>	<u>1981</u>
Total Sources	\$22,062.84	\$17,368.33
Total Applications	\$21,272.57	\$12,804.85
Source over (under)	\$ 790.27	\$ 4,563.48
Cash Living Expenses	\$ 9,000.00	\$ 9,000.00
Additional Income Required	<u>\$ 8,209.73</u>	<u>\$ 4,436.52</u>

7. The total cash living expenses of \$9,000.00 for each year at issue were estimated by the Audit Division as follows:

<u>Expenditure</u>	<u>Amount</u>
Clothing and Medical Expenses	\$2,500.00
Repairs (home)	1,000.00
Telephone (\$15.00 per month)	180.00
Laundry-Dry cleaning (\$5.00 per week)	260.00
Home Furnishings	500.00
Auto expense	1,500.00
Transportation	500.00
Recreation - Entertainment	500.00
Education	1,000.00
Magazines, papers, books	100.00
Insurance	960.00
TOTAL ESTIMATED CASH LIVING EXPENSES	<u>\$9,000.00</u>

8. During the year 1980 petitioner's family consisted of himself, his wife and six (6) children, ranging from four (4) to thirteen (13) years of age. In the latter part of 1981 they had another child.

9. In the aforestated cash living expense schedule, the amount estimated for clothing and medical expenses was less than the amount properly attributable to said expenses based on statistical guidelines published by the Bureau of Labor Statistics. The balance of expenses incorporated into said schedule were estimates based on the auditor's experience. Said schedule provided no amount for food since petitioner made withdrawals of food from his business.

10. Neither petitioner nor his wife personally appeared for the hearing. Although their representative argued that the estimated cash living expenses were overstated, no documentary evidence was submitted to support such argument. They further argued that petitioner is properly entitled to credit for an additional source of income of \$5,000.00 in 1980 based on a statement dated October 5, 1980, which purports to be from Mrs. Farraj's parents and states as follows:

"I, Neamah Farraj and I, Hassan Farraj living at Beit Hanina Village, Jerusalem Israel do hereby make this statement: this 5th of October 1980, that we have given \$5,000.00 (five thousand dollars) to Zahiah Farraj, our daughter living at 506 Sixth Avenue, Brooklyn, NY USA.

This money is given as to invest in secured accounts, and is to be returned upon the death of our daughter Zahiah Farraj"

11. No supporting documentation was submitted to evidence the purported transfer of funds to Mrs. Farraj from her parents.

CONCLUSIONS OF LAW

A. That pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, the burden of proof is upon the petitioner in any case before the Tax Commission except in three (3) instances, none of which are applicable herein.

B. That petitioner has failed to sustain his burden of proof to show that the adjustments made and the deficiency asserted by the Audit Division **were** erroneous or improper.

C. That the penalties asserted pursuant to section 685(a)(1) of the Tax Law are hereby abated since petitioner has filed returns for the years at issue herein.

D. That the two (2) notices of deficiency issued October 5, 1983 are cancelled insofar as they apply to Zahiah Farraj (see Finding of Fact "4", supra).

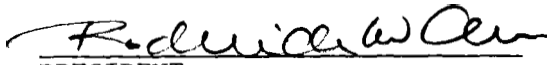
E. That the petition of Mahmoud H. Farraj and Zahiah Farraj is granted to the extent provided in Conclusions of Law "C" and "D", supra, and except as so granted said petition is, in all other respects, denied.

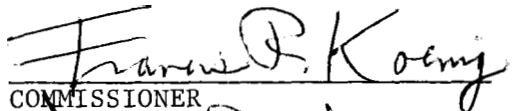
F. That the two (2) notices of deficiency issued October 5, 1983 are to be modified so as to be consistent with the decision rendered herein.

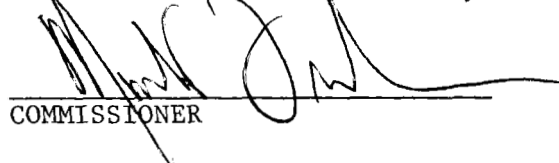
DATED: Albany, New York

STATE TAX COMMISSION

JAN 10 1986


PRESIDENT


COMMISSIONER


COMMISSIONER