

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

JOHN F. O'NEILL

DECISION

for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Years 1975  
through 1977.

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Petitioner, John F. O'Neill, 4 Platt Street, Poughkeepsie, New York 12601, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1975 through 1977 (File No. 48169).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Building #9, W. Averell Harriman Office Building Campus, Albany, New York 12227, on January 31, 1986 at 9:15 A.M., with all briefs to be submitted by March 31, 1986. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

#### ISSUES

I. Whether Petitioner is entitled to a deduction for a bad debt during the years in issue.

11. Whether petitioner has substantiated his claim that he is entitled to additional business expenses during the years in issue.

#### FINDINGS OF FACT

1. On or about June 15, 1976, petitioner filed a New York State income tax return for the year 1975. On this return, petitioner reported that he was

an insurance agent and broker. Petitioner also filed a Federal Schedule C encaptioned Profit (or Loss) from Business or Profession. On this schedule, he reported the income and expenses from his activity as an insurance agent and broker. Petitioner did not attach an unincorporated business tax return to his personal income tax return.

2. On or about June 15, 1977, petitioner filed separately, with his wife, a New York State income tax return for the year 1976. On this return, petitioner reported that he was an insurance agent. Petitioner attached to his return a Federal Schedule C which reported income and expenses from his activities as an insurance agent and broker. He did not file an unincorporated business tax return with his personal income tax return.

3. On or about June 15, 1978, petitioner filed a New York State income tax return for the year 1977. On this return, petitioner reported that he was an insurance agent. Petitioner attached to this return a Federal Schedule C which reported his income and expenses from his activities as an insurance agent. He did not file an unincorporated business tax return for the year 1978.

4. On July 7, 1983, the Audit Division issued a Notice of Deficiency to petitioner, John F. O'Neill, asserting a deficiency of unincorporated business tax for the years 1975 through 1977 in the amount of \$1,127.60, plus penalty of \$654.43 and interest of \$673.48, for a total amount due of \$2,455.51. The amount of tax asserted to be due was premised upon the income and deductions which petitioner reported on his New York State personal income tax returns. The Statement of Audit Changes, which was issued on June 30, 1982, explained that the Notice of Deficiency was based on the Audit Division's position that petitioner's income from his activities as an insurance broker was subject to

unincorporated business tax. The penalties were imposed pursuant to section 685(a)(1) of the Tax Law for failure to file unincorporated business tax returns, section 685(a)(2) of the Tax Law for failure to pay unincorporated business tax and section 685(c) of the Tax Law for failure to file a declaration or underpayment of estimated unincorporated business tax.

5. During 1983, petitioner filed an Amended New York State Resident Income Tax Return for the year 1975. Attached to this return was a New York State Unincorporated Business Tax Return for the year 1975. On this return, petitioner reported greater business expenses than on the previously filed Federal Schedule C. Among other things, petitioner reallocated a bad debt deduction from a personal deduction to a business deduction.

6. During 1983, petitioner also filed an Amended New York State Resident Income Tax Return for the year 1976. Petitioner attached to this return a New York State Unincorporated Business Tax Return for the year 1976. On this return, petitioner reported greater business expenses than on the previously filed Federal Schedule C. Among other things, petitioner reallocated a bad debt deduction from a personal deduction to a business deduction.

7. During the year 1975, petitioner agreed to provide DeGroodt Enterprises, Inc. and DeGroodt Construction Corp. insurance coverage on a building located in Poughkeepsie, New York. The insurance was to be obtained through the agency of Marshall and Sterling, a firm which, in turn, was going to obtain the policy from the Continental Insurance Company. At the time the premium on this insurance policy was due, April 1, 1975, the insureds did not have sufficient funds to pay the premium due of \$28,485.00. Therefore, on October 28, 1975, petitioner obtained a loan from Marine Midland Bank and used the proceeds of this loan to pay the insurance premium.

8. At or about the time petitioner obtained the loan from Marine Midland Bank, petitioner obtained a promissory note from DeGroodt Enterprises, Inc. and from DeGroodt Construction Corp. The note, which was in an amount equal to the insurance premium, required payment on December 31, 1975. The note was secured by a building in Poughkeepsie, New York.

9. When the note from DeGroodt Enterprises, Inc. and DeGroodt Construction Corp. became due, the makers of the note defaulted. Petitioner decided at this juncture not to pursue his legal remedies because he felt that he would eventually be repaid. Further, petitioner was of the opinion that if he demanded payment on the note, his clients would have been forced into bankruptcy. Petitioner believed that he would have collected only a small portion of what was due if his clients had been forced into bankruptcy. As time went on, the makers of the note made occasional payments of interest. Eventually, an agreement was reached between one of the principals of the corporation and petitioner that when the building in Poughkeepsie which served as security for the note was sold, petitioner would receive the amount due.

10. In 1983, the building which served as collateral for the note between petitioner and DeGroodt Enterprises, Inc. and DeGroodt Construction Corp. was sold. At this time, petitioner learned that there were numerous liens on the building for debts such as franchise tax, sales tax, city tax and school tax which had to be satisfied before he was paid. Consequently, in November, 1983, petitioner received a check for approximately \$3,000.00 representing his share of the proceeds from the sale of the building.

11. It was clear to petitioner by late March, 1977, that the makers of the note would not have the funds to pay the amount due. However, he remained

hopeful until October, 1983 that he would receive most of the money due to him from the proceeds of the sale of the building.

12. Petitioner never placed a lien on the building or otherwise pursued any legal remedies to collect the amount due **from** DeGroodt Enterprises, Inc. or DeGroodt Construction Corp.

13. At the hearing, petitioner averred that he deliberately overstated his income through an understatement of his business expenses during the years in issue because he wished to obtain the maximum social security benefits possible. However, no evidence was presented to establish that he was entitled to additional business expenses. Petitioner also maintained that if he had pursued his legal remedies, New York would not have collected the franchise and sales tax it was due.

#### CONCLUSIONS OF LAW

A. That the burden of proof is upon the taxpayer to establish that a bad debt became worthless in the year in which the deduction is claimed (Tax Law §§ 689[e], 722; Matter of Lawrence L. and Anna M. Miller, State Tax Commission, January 29, 1982). In view of Finding of Fact "10", it is clear that the debt from DeGroodt Enterprises, Inc. and DeGroodt Construction Corp. may not be considered worthless during the particular years in issue. Accordingly, petitioner **is** not entitled to a reduction in the amount of unincorporated business tax asserted to be due on the basis of an additional bad debt expense.


B. That since petitioner has not presented any evidence to establish that he is entitled to additional business deductions, the Audit Division's computation based on the business deductions reported on petitioner's Federal Schedule C was proper.


C. That the petition of John F. O'Neill is denied and the Notice of Deficiency issued July 7, 1983 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

SEP 26 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER