

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ANNA O'HAGAN

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Taxes under Article
22 of the Tax Law for the Years 1979, 1980 and :
1981.

Petitioner, Anna O'Hagan, 57 Oak Road, Briarcliff Manor, New York 10510,
filed a petition for redetermination of a deficiency or for refund of personal
income taxes under Article 22 of the Tax Law for the years 1979, 1980 and 1981
(File No. 54635).

A hearing was held before Jean Corigliano, Bearing Officer, at the offices
of the State Tax Commission, Two World Trade Center, New York, New York, on
September 10, 1986 at 10:45 A.M., with all briefs to be submitted by December 19
1986. Petitioner appeared by Robert C. Leonard, P.A. The Audit Division appeared
by John P. Dugan, Esq. (Michael J. Glannon, Esq., of counsel).

ISSUE

Whether the Audit Division properly attributed additional personal income
to petitioner in the form of a constructive dividend from a corporation in
which she was the sole shareholder.

FINDINGS OF FACT

1. On March 30, 1984, the Audit Division issued to petitioner, Anna
O'Hagan, a Notice of Deficiency, asserting additional personal income tax due
for the years 1979, 1980 and 1981 in the amounts of \$10,034.68, \$19,197.26 and
\$20,769.32, respectively plus interest and negligence penalties pursuant to Tax

2. Mrs. O'Hagan is the president and sole shareholder of Manor Beef House Corporation ("Manor") which operates a restaurant in Briarcliff Manor, New York.

3. The Audit Division conducted a sales tax field audit of Manor for the period December 1, 1978 through February 28, 1982 which disclosed substantial underreporting of taxable sales. Manor agreed to the Audit Division's findings.

4. The sales tax audit findings were used to calculate corporation franchise tax due from Manor for fiscal years 1979, 1980 and 1981. Manor's gross receipts were treated as a constructive dividend to Mrs. O'Hagan, increasing her taxable income accordingly. The Audit Division reviewed Mrs. O'Hagan's personal income tax returns for 1979, 1980 and 1981, but it did not employ an indirect audit method to corroborate its determination that Mrs. O'Hagan received unreported income from Manor.

5. Following a Tax Appeals Bureau conference, Manor provided the Audit Division with proof of business expenses and cost of goods sold, resulting in a reduction in its corporation franchise tax liability. As a result, the deficiency asserted against Mrs. O'Hagan for the years at issue has been reduced to \$8,691.91. Manor has agreed to the deficiency asserted against it.

6. Mrs. O'Hagan received no income from Manor during the years at Issue. The business was operated by her grandson, John F. O'Hagan, who was authorized to write checks from the corporation's account and to supervise every aspect of the restaurant's affairs. During the audit period, Mr. O'Hagan used corporate receipts to repay loans and to make expenditures not properly deductible by the corporation as business expenses. Mrs. O'Hagan is now in her eighties. She has never been personally involved in Manor's operations.

CONCLUSIONS OF LAW


A. That ~~the~~ Tax Commission has previously decided that the results of a Sales tax audit may properly be employed as a basis to assert an income tax deficiency. (See, e.g., Matter of William T. Kelly, State Tax Commn., December 1984). However, Mrs. O'Hagan has shown that Manor's receipts were not properly attributable to her as personal income.


B. That the petition of Anna O'Hagan is granted, and the Notice of deficiency issued on March 30, 1984 is cancelled.

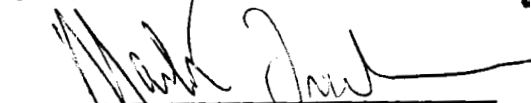
DATED: Albany, New York

STATE TAX COMMISSION

JAN 30 1987.


PRESIDENT


COMMISSIONER


COMMISSIONER