

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

JOHN MCANIFF AND PATRICIA MCANIFF

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1980, 1981 and
1982.

Petitioners, John McAniff and Patricia McAniff, 17 Soloff Road, Massapequa, New York 11758, 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 1980, 1981 and 1982 (File No. 62199).

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 September 11, 1986 at 10:45 A.M. Petitioner John McAniff appeared **pro se**. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether adjustments made to claimed business losses and medical and dental expenses were proper.

II Whether penalties and interest may properly be waived.

FINDINGS OF FACT

1. John McAniff (hereinafter "petitioner") and his wife, Patricia McAniff, filed New York State income tax resident returns for the years 1980, 1981 and 1982. On each return petitioner claimed a business loss which was derived,

business "Whispering Designs". According to such schedules, said business was conducted at petitioner's personal residence.

2. Petitioner's claimed business loss for each year at issue was computed as follows:

1980

Income

Leather products wholesaled \$ 125.00

Expenses

Telephone allocation \$15.00 x 12 =	\$ 180.00
Financial planning	250.00
Friends of the Dance - Promotion expense and meeting expense	435.00
Outside services - Chris McAniff	1,300.00
Newspapers, magazines etc.	110.00
Transportation (6,500 miles @ 20¢)	1,300.00
Music expense	150.00
Depreciation	<u>100.00</u>

<u>TOTAL EXPENSES</u>	<u>\$3,825 .00</u>
LOSS	<u><u>\$3,700.00</u></u>

1981

Income

Leather products wholesaled \$ 350.00

Expenses

Materials: leather	\$ 105.00
Meeting expense	620.00
Tools	298.00
Selling expense	850.00
Telephone (\$15 x 12)	180.00
Depreciation	100.00
Accounting	150.00
Subscriptions	85.00
Selling expense: Leather production	358.00
Messengers - Chris McAniff	1,300.00
Travel (12,000 miles @ 20¢)	2,400.00
Dancing Friends expense	550.00

<u>TOTAL EXPENSES</u>	\$6,996.00
<u>LOSS</u>	<u>\$6,646.00</u>

1982

Income

Shop teaching, woodworking (from w-2)	\$33,466.00
Dancing Friends	<u>2,130.00</u>
Total Income	\$35,596.00

Expenses

Meeting expense	\$ 945.00
Telephone (\$20 x 12)	240 00
Allocation of office at home	600.00
Depreciation	500.00
Accounting	885.00
Records, etc.	125 00
Messengers Chris McAniff	1,300.00
Travel (13,000 miles @ 20¢)	2,600.00
Dancing Friends expense	4,094.00
Less Tom Arnold's share of loss	<u>(906.00)</u>

<u>TOTAL EXPENSES</u>	\$ 9,083.00
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<u>Net Income Unadjusted</u>	\$27,713.00
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<u>Adjustment to Reclassify W-2 Income</u>	(\$33,466.00)
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LOSS	<u>\$ 7,053.001</u>
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3. On January 31, 1985, the Audit Division issued three (3) statements of audit changes whereon, as the result of an audit, the following adjustments were made:

1980

	<u>Per Return</u>	<u>Corrected</u>	<u>Adjustment</u>
Business Income or (Loss)	\$(3,700.00)	\$ (125.00)	\$3,575.00
Medical & Dental Expenses	1,319.00	118.00	<u>1,201.00</u>
Total			<u>\$4,776.00</u>

1981

	<u>Per Return</u>	<u>Corrected</u>	<u>Adjustment</u>
Business Income or (Loss)	\$(6,646.00)	\$ (398.00)	\$6,248.00
Medical & Dental Expenses	1,941.00	91.00	<u>1,850.00</u>
Total			<u>\$8,098.00</u>

1982

	<u>Per Return</u>	<u>Corrected</u>	<u>Adjustment</u>
Business Income or (Loss)	\$(7,053.00)	\$(4,755.00)	\$2,298.00
Medical & Dental Expenses	638.00	-0-	<u>638.00</u>
Total			<u>\$2,936.00</u>

4. On April 8, 1985, the Audit Division issued three (3) notices of deficiency to petitioner and his wife as follows:

a - For 1980, asserting additional personal income tax of \$518.00, plus penalty of \$25.90 and interest of \$259.59, for a total due of \$803.49.

b - For 1981, asserting additional personal income tax of \$797.00, plus penalty of \$39.85 and interest of \$286.38, for a total due of \$1,123.23.

c - For 1982, asserting additional personal income tax of \$293.00, plus penalty of \$14.65 and interest of \$60.98, for a total due of \$368.63.

5. Said penalties were asserted for negligence pursuant to section 685(b) of the Tax Law.

6. The Notice of Deficiency issued for taxable year 1980 was timely since the 1980 return was late filed on September 7 1982

7. Petitioner conceded the aforesaid adjustments however, he argued that he should not be subject to the interest and penalty charges asserted since he believes that "the audits were in direct retaliation for an appeal filled [sic] by Louis F. Brush on a series of some ninety appeals on tax returns done by CPA Albert Sasson for years 1978 & 1979" and that "[i]f the bureau **is** to take issue with a C.P.A. let them do **so** directly with the C.P.A."

CONCLUSIONS OF LAW

A. That the adjustments made for the years at issue were conceded by the petitioner. Accordingly, such adjustments are hereby sustained.

B. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that the penalties asserted for negligence were improperly asserted. Accordingly, such penalties are sustained.


C. That interest must be charged on an underpayment of tax within the meaning and intent of section 684 of the Tax Law. The State Tax Commission does not have authority to waive interest.

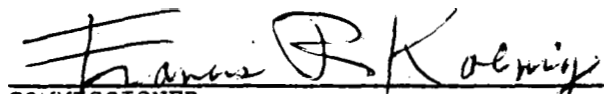
D. That the petition ~~of~~ John McAniff and Patricia McAniff **is** denied and the three (3) notices of deficiency issued April 8; 1985 are sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 24 1987


PRESIDENT


COMMISSIONER

