

STATE OF **NEW YORK**
STATE TAX COMMISSION

In the Matter of the Petitions
of :

RUDOLPH **P.** RUSSO AND JEAN M. RUSSO **DECISION**
for Redetermination of Deficiencies or for
Refunds of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1981 through 1983.
.

Petitioners, Rudolph P. Russo and Jean M. Russo, 32 Spy Hill, Poughkeepsie, New York 12603, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1981 through 1983 (File **Nos.** 62311 and 62312).

A hearing was held before Arthur S. Bray, Hearing Officer, at the offices of the State Tax Commission, Building #9, W. A. Harriman State Office Building Campus, Albany, New York, **on** January 16, 1987 at 9:30 A.M. Petitioner Rudolph P. Russo appeared pro se and as representative of his wife, Jean M. Russo. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUES

- I.** Whether the statute **of** limitations bars the Audit Division from asserting deficiencies of personal income tax for the years 1981, 1982 and 1983.
- II.** Whether petitioners are entitled to a greater deduction for charitable contributions than the amount allowed by the Audit Division.
- III.** Whether petitioners have substantiated entitlement to a greater automobile business expense than the amount allowed by the Audit Division.

FINDINGS OF FACT

1. Petitioners, Rudolph P. and Jean M. Russo, filed a New York State Resident Income Tax Return for the year 1981 and elected a filing status of married filing joint return. On this return, petitioners claimed charitable contributions in the amount of \$2,000.00. In conjunction with this return, Mr. Russo filed a Federal Schedule C captioned Profit or (Loss) From Business or Profession. The Federal Schedule C reported deductions for car and truck expenses in the amount of \$3,825.00 and for parking and tolls in the amount of \$625.00.

2. To the extent at issue herein, petitioner Rudolph P. Russo filed a New York State Resident Income Tax Return for the year 1982 wherein he elected a filing status of married filing separately on separate forms. On his return, Mr. Russo reported charitable contributions in the amount of \$3,500.00. He also filed a Federal Schedule C wherein he claimed deductions for car and truck expenses in the amount of \$3,728.00 and for parking and tolls in the amount of \$1,090.00.

3. Petitioners filed a New York State Resident Income Tax Return for the year 1983 wherein they elected a filing status of married filing separately on one return. On this return, Mr. Russo reported that he made charitable contributions in the amount of \$3,500.00. He also reported business income which was determined, in part, from claiming car and truck expenses of \$2,407.00 and tolls and parking expenses of \$1,090.00.

4. On April 8, 1985, the Audit Division issued a Notice of Deficiency to petitioners, Rudolph P. Russo and Jean M. Russo, asserting a deficiency of personal income tax for the year 1981 in the amount of \$455.34, plus interest

Division issued a Notice of Deficiency to Mr. Russo asserting a deficiency of personal income tax for the years 1982 and 1983 in the amount of \$2,043.43, plus interest of \$226.23, for a total amount due of \$2,269.66. Lastly, on April 8, 1985, the Audit Division issued a Notice of Deficiency to Mr. Russo asserting a deficiency of personal income tax for the year 1982 in the amount of \$35.44, plus interest of \$7.63, for a balance due of \$43.07.

5. At the hearing, the Audit Division acknowledged that the Notice of Deficiency asserting tax due in the amount of \$35.44 plus interest of \$7.63 should be cancelled on the ground that it was issued to the wrong individual.

6. To the extent at issue herein, the asserted deficiencies of personal income tax were premised upon the disallowance of eighty-five percent of Mr. Russo's claimed automobile expenses and parking and toll expenses on the ground that Mr. Russo was unable to provide adequate substantiation. The Audit Division also only allowed charitable contributions to the extent that petitioner could produce cancelled checks, plus an allowance of two dollars a week for cash contributions. The foregoing resulted in a disallowance of charitable contributions of \$3,095.00 during 1982 and \$2,825.00 during 1983.

7. During the years in issue, Mrs. Russo attended Alcoholics Anonymous, on a near daily basis. On many occasions, she attended two meetings in a single day. It was customary for those attending such meetings to make a donation to help defray the cost of such meetings. Mrs. Russo averred that she customarily made a donation of \$2.00 at each such meeting which she attended and that such donations totalled \$700.00 a year. However, since Alcoholics Anonymous meetings are subject to strict anonymity, it is impossible to provide documentary evidence of attendance at or donations at such meetings. In

addition, during the years in issue, **Mrs.** Russo acted as a sponsor for certain persons in the Alcoholics Anonymous program. In this position, Mrs. Russo made numerous trips to individual homes as well as provided transportation to and from meetings. Mrs. Russo drove approximately 3,500 miles each year in the furtherance of these services.

8. During the years 1981, 1982 and 1983, Mr. Russo and his family attended Sunday **Mass** services at Holy Trinity Church, Poughkeepsie, New **York**, Saint Martin de Poires Church, Poughkeepsie, New York, or Saint Denis/Saint Columbus Church, Hopewell Junction, New York. **Mr.** Russo maintained that the cash contributions made at such services for each of the years 1981, 1982 and 1983 was approximately \$500.00 and that additional cash contributions of approximately \$250.00 per year were made during special collections and church holidays.

9. Mr. Russo estimated that during each of the years in issue, he made cash contributions of \$250.00 to miscellaneous charities that solicit door-to-door, both at home and at work.

10. During the years 1981 through 1983, **Mr.** Russo was engaged in a number of different activities involving the production of income. These activities included counsel to the Dutchess County Legislature, counsel to the Dutchess County Community College, employment at a family-owned corporation known as Heritage Holding Corporation, employee of Russo's Wine and Liquor Store, Inc., maintaining **law** offices in Poughkeepsie and Hopewell Junction, representing inmates at various correctional facilities and operation of the Revere Water Company. Mr. Russo also represented individuals before the Family Court as law guardian **or** as assigned counsel.

11. Mr. Russo did not maintain mileage records. However, he contended that in view of the amount of travel in which he was engaged, it would have been impossible to keep a diary.

12. At the hearing, Mr. Russo was uncertain as to how he arrived at the mileage expense he deducted on his tax return. However, he believed that his mileage expense was premised upon an estimated 22,500 business miles traveled during the year. The mileage was divided by twenty miles to a gallon and the remainder was multiplied by the price of gasoline. Mr. Russo also added in the price of an oil change for every 2,500 miles traveled.

13. Mr. Russo estimated the amount he spent on parking and **also** estimated the amount he spent on **tolls** on the basis of where he traveled. Mr. Russo maintained that it was impossible to park in downtown Poughkeepsie without paying fifty cents an hour for parking.

CONCLUSIONS OF LAW

A. That Tax Law § 683(a) provides that tax shall be assessed within three years after the returns were filed. However, a return filed prior to the last date prescribed by law is deemed to be filed on such last date (Tax Law § 683[b][1]). The last day for the filing of the personal income **tax** returns involved herein was April 15 of the succeeding taxable year (20 NYCRR 146.1). Since the notices of deficiency were issued within three years of the date the returns were deemed filed, the notices of deficiency were not barred by the statute of limitations.

B. That, in general, the New York itemized deduction of **a** resident individual means the total amount of his deductions from Federal adjusted gross income, other than Federal deductions for personal exemptions, as provided in

the laws of the United States for the taxable year, with certain modifications which are not relevant herein (Tax Law § 615[a]).

C. That in order for a contribution to an organization to be deductible from Federal adjusted gross income, it must be made to, or for the use of, the type of organization described in I.R.C. § 170(c). Petitioners have not presented sufficient evidence to establish that the particular chapter of Alcoholics Anonymous satisfied the criteria of I.R.C. § 170(c). In this regard, judicial notice is taken that there is no chapter of Alcoholics Anonymous listed in the Department of Treasury's Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1954 in the vicinity of Poughkeepsie, New York. Therefore, petitioners have failed to sustain the burden of proof of establishing that the contributions to Alcoholics Anonymous were deductible charitable contributions (Tax Law § 685[e]).

D. That based upon all of the facts and circumstances presented, including Mr. Russo's credible demeanor, it is found that Mr. Russo is entitled to deductions for charitable contributions made by cash to the Roman Catholic Church and miscellaneous charities in excess of that allowed by the Audit Division (Cohan v. Commr. of Internal Revenue, 39 F2d 540). Accordingly, Mr. Russo is to be allowed an additional \$500.00 per year for cash charitable contributions.

E. That an individual claiming a travel expense is expected to maintain records or other proof substantiating the amount of the expense, time, place and business purpose of each trip (I.R.C. § 274; Treas. Reg. § 1.274-5[b1[2]]). That since petitioner did not maintain any vehicle usage logs or other evidence

substantiating the foregoing items, Mr. Russo has not sustained his burden of proving entitlement in full to the expenses claimed on the returns in question (**see** Matter of Juan Laurilla, State Tax Commission, November 13, 1986).


F. That in accordance with Finding of Fact "5", the Notice of Deficiency asserting tax due in the amount **of** \$35.44 is cancelled.

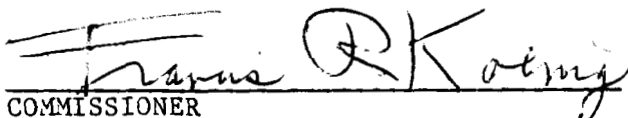
G. That the petitions of Rudolph P. Russo and Jean M. Russo are granted to the extent **of** Conclusions **of** Law "D" and "F" and the Audit Division is directed **to** modify **or** cancel the notices of deficiency accordingly; and, except as so modified or cancelled, the notices of deficiency are sustained.

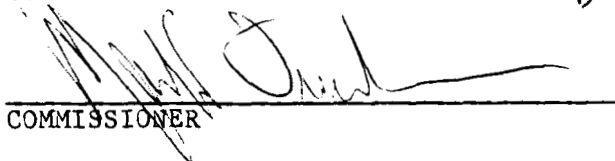
DATED: Albany, New **York**

STATE TAX COMMISSION

AUG 12 1987


PRESIDENT


COMMISSIONER


COMMISSIONER