

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

STEPHEN M. SUNDHEIMER

DECISION

for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the Years 1981 through 1983.

Petitioner, Stephen M. Sundheimer, 300 East 56th Street, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of New York State and New York City Personal Income Tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1981 through 1983 (File No. 64946).

A hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 14, 1986 at 9:45 A.M., with all briefs to be submitted by July 30, 1986. Petitioner appeared by Martin B. Hirsh, Esq. The Audit Division appeared by John P. Dugan, Esq. (Michael Infantino, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly disallowed losses attributable to dog breeding and showing activities.

II. Whether penalty was properly imposed.

FINDINGS OF FACT

1. Petitioner, Stephen M. Sundheimer, filed New York State and City of New York resident income tax returns for 1981 and 1982. Petitioner and his

wife, Lorri Sundheimer, filed joint New York State and City of New York resident income tax returns for 1983.

2. Upon audit of the returns, the Audit Division disallowed reported losses attributable to "dog shows" of \$10,751.00, \$17,390.00 and \$9,492.00, respectively, for the years 1981, 1982 and 1983. The Audit Division also disallowed miscellaneous deductions (Schedule A Form 1040) of \$2,580.00 for 1981 and \$2,965.00 for 1982. These deductions were allegedly for investment advisory expenses, telephone expenses and out-of-pocket selling expenses. Petitioner offered no substantiation for the miscellaneous deductions; the amounts claimed were estimates.

3. On February 6, 1985 the Audit Division issued the following statements of audit changes:

- (a) To petitioner Stephen M. Sundheimer for 1981 and 1982. This Statement of Audit Changes disallowed dog show expenses as hobby losses. The amounts disallowed were \$10,751.00 for 1981 and \$17,390.00 for 1982. Miscellaneous deductions of \$2,580.00 for 1981 and \$2,965.00 for 1982 were also disallowed for lack of proof. A negligence penalty was asserted. Additional tax due was stated as follows:

	<u>1981 - NYS</u>	<u>1981 - NYC</u>	<u>1982 - NYS</u>	<u>1982 - NYC</u>
Add. Tax Due	\$2,611.81	\$1,418.30	\$4,075.74	\$1,370.52
Penalty	130.59	70.92	203.79	68.53

- (b) To Stephen M. and Lorri Sundheimer for 1983. This Statement of Audit Changes disallowed dog show expenses of \$9,492.00 as a hobby loss. A negligence penalty was also asserted. Additional New York State Tax for 1983 was \$1,051.18. Section 685(b) penalty was \$52.56. The New York City additional tax due for 1983 was \$448.97 with a penalty of \$22.45.

4. On March 25, 1985, the Audit Division issued the following notices of deficiency to petitioner Stephen M. Sundheimer: for New York State and City years 1981 and 1982, additional tax \$9,476.37, penalty \$473.83, plus interest;

for New York State and New York City year 1983, additional tax of \$1,500.15, total penalty of \$75.01, **plus** interest.

5. Petitioner Stephen M. Sundheimer is a commodities broker. He also breeds and shows Irish terrier dogs. Petitioner engaged the services of a professional dog handler, Robert **Clyde**, who boarded and cared for the dogs. Petitioner paid Mr. Clyde \$12,483.00 in 1981, \$19,360.00 in 1982 and \$9,443.00 **in** 1983. Petitioner has been showing dogs since 1978 **or** earlier and, at least through 1983, has never earned a profit at it. **In** 1981 petitioner reported \$2,000.00 in breeding fees and in 1982 he reported \$2,200.00 in breeding fees. No **gross** income was reported from this activity for 1983. Expenses for those years were \$12,751.00, \$19,590.00 and \$9,492.00 respectively.

6. Petitioner placed what appear to be sponsorship advertisements in various dog show catalogs. The following full page advertisement from the catalog **of** the Montgomery County Kennel Club Show **of** October 10, 1982 appears to be representative:

"GOOD LUCK TO EVERYONE

from

STEPHEN SUNDHEIMER

and

SUNNY S KENNELS

Puppies Expected October 1, 1982
Ch. Rockledge Bra Brendan

ex

Ch. Sunny's Pretty Queen
Both Best in Show Winners

Robert Clyde
Exclusive Agent "

The frequency and cost **of** these advertisements is not **in** the record. It is noted that no advertising expenses were deducted **on** the Schedule C's for the years at issue.

7. Petitioner contends that one of his dogs, Ch. **Sunny's** Pretty Queen, is being illegally held by one Hofman in California. Petitioner has commenced litigation for the return of the dog. Be paid \$200.00 for the dog in 1979 and claims it was worth \$20,000.00 by 1983.

CONCLUSIONS OF LAW

A. **That** petitioner's dog breeding and showing activities constituted activities "not engaged in for profit" within the meaning of section 183 of the Internal Revenue Code. Accordingly, the **losses** attributable to said activities for the years at issue were properly disallowed by the Audit Division. It **is** particularly noted that petitioner has been engaged in dog breeding and showing since at least 1978 and has never reported a profit **from** such activities. In fact, for the three years at issue, petitioner reported \$4,200.00 in income against \$42,233.00 in expenses (see Steele v. Commissioner, 45 TCM 640 [1983]).

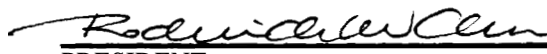
E. That petitioner has not sustained his burden of proof under section 589(e) of the Tax **Law** to show that the negligence penalty was improperly imposed


C. That the petition of Stephen M. Sundheimer **is** denied and the notices of deficiency issued March 25, 1985 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN. 16 1987


PRESIDENT


COMMISSIONER


COMMISSIONER