

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JAKOB MICHAEL
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1965 and 1966.

DECISION

Petitioner, Jakob Michael, residing at 211 Central Park West, New York, New York, has 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 1965 and 1966. (File No. 01334).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 17, 1976, at 1:30 P.M. Petitioner appeared by Peter J. Zelmanow, Certified Public Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq., of counsel).

ISSUE

Whether petitioner, Jakob Michael, properly deducted home office expenses during the years 1965 and 1966.

FINDINGS OF FACT

1. Petitioner, Jakob Michael, timely filed New York State resident income tax returns for the years 1965 and 1966.

2. On November 25, 1968 and April 13, 1970, the Income Tax Bureau issued statements of audit changes against petitioner, Jakob Michael, disallowing deductions for home office expenses as well as other items not in issue. In accordance with the aforesaid statements of audit changes, it issued notices of deficiencies of \$438.60 and \$363.13, respectively.

3. Petitioner, Jakob Michael, was President of Standard Industries during the years 1965 and 1966. Petitioner, also worked for two other corporations in 1966. During the years in controversy, petitioner worked exclusively in his home office. Because of petitioner, Jakob Michael's advanced age and poor physical condition, his physician gave him specific instructions not to work more than a few hours a day away from his home.

4. In order to retain petitioner, Jakob Michael, as its President and benefit from his expertise and experience, Standard Industries set up an office in his apartment. Standard Industries provided petitioner with two full-time secretaries who worked exclusively in his home, as well as desks, filing cabinets, photocopy machines and other office equipment.

5. Petitioner, Jakob Michael, spent an inordinate amount of time in his home office supervising and directing various corporate activities for Standard Industries. He conducted conferences, reviewed stockholder reports, analyzed personnel requirements and engaged in a myriad of other corporate duties. The few hours daily, petitioner, Jakob Michael's, physician permitted him to work away from home would not have been sufficient to enable petitioner to perform even a modicum of the aforesaid activities.

6. Petitioner, Jakob Michael's apartment had ten rooms, three of which were used exclusively for business purposes. During each year in question, petitioner deducted three-tenths of his annual rental expense of \$10,260.00 as a home office expense.

CONCLUSIONS OF LAW

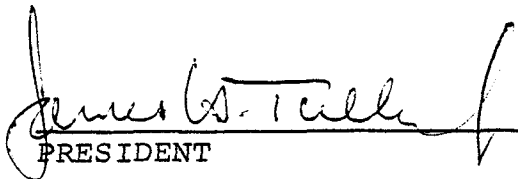
A. That because of petitioner, Jakob Michael's physical condition, extensive workload and business experience, it was necessary for petitioner to use and incumbent on Standard Industries to provide as a "condition of his employment", a home office for the performance of his "ordinary and necessary" business activities. Therefore, petitioner's deductions for home office expenses were

proper within the meaning and intent of section 162(a) of the Internal Revenue Code. (Rev. Ruling 62-180, 1962-2 CB 52, see more lenient "appropriate and helpful" standard, Newi v. Commissioner, 432 F 2d 998).

B. That the petition of Jakob Michael is granted and the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued November 25, 1968 and April 13, 1970.

DATED: Albany, New York
December 8, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER