

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Lawrence & Anna M. Miller

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Years :
1974 & 1975.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of January 29, 1982, 1982, he served the within notice of Decision by certified mail upon Lawrence & Anna M. Miller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence & Anna M. Miller
1107 North St.
White Plains, NY 10605

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
29th day of January 1982.

Annice A. Hegland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 29, 1982

Lawrence & Anna M. Miller
1107 North St.
White Plains, NY 10605

Dear Mr. & Mrs. Miller:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LAWRENCE L. and ANNA M. MILLER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1974 and 1975.	:	

Petitioners, Lawrence L. Miller and Anna M. Miller, 1107 North Street, White Plains, New York 10605, 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 1974 and 1975 (File No. 27135).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on March 23, 1981 at 1:15 P.M. Lawrence L. Miller appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUES

- I. Whether petitioners had unreported income for the year 1974.
- II. Whether petitioners' claimed deductions for bad debts were properly substantiated for the 1974 and 1975 tax years.
- III. Whether petitioners substantiated a deduction for travel expenses of Anna M. Miller for the 1975 tax year.
- IV. Whether petitioners substantiated deductions for use of an office and telephone in petitioners' home by Anna M. Miller.

FINDINGS OF FACT

1. Petitioners, Lawrence L. Miller and Anna M. Miller, filed a joint New York State Income Tax Resident Return for the years 1974 and 1975. Both returns were filed on or about December 15, 1976.

2. On December 15, 1978 the Audit Division issued a Statement of Audit Changes for the year 1975 in which certain miscellaneous deductions were disallowed because of a lack of substantiation by documentary evidence and a correction was made to New York taxable income because of the erroneous reporting of a long term capital loss deduction as an adjustment to income. On December 27, 1978 the Audit Division issued a revised Statement of Audit Changes for the year 1974 which made certain adjustments to petitioners' claimed deductions and adjustments to income. Accordingly, on March 5, 1979 the Audit Division issued a Notice of Deficiency for the years 1974 and 1975 of \$2,886.17 plus interest of \$808.27 for a total of \$3,694.44.

3. Petitioners filed a petition for the tax years 1974 and 1975 which challenged the denial of business expense deductions arising from the overseas trips of petitioner Anna Miller. The petition also challenged the denial of deductions for certain claimed bad debts.

4. On January 11, 1980 the Audit Division issued a "Notice of Claim" in which it asserted a greater deficiency pursuant to section 689(d)(1) of the Tax Law for the year 1974 than that asserted in the Notice of Deficiency dated March 5, 1979. This greater deficiency was claimed because of an unexplained increase in bank deposits in the 1974 tax year over the 1973 tax year without a corresponding increase in income being reflected by the 1973 and 1974 New York State income tax returns.

5. In January 1973 petitioner Lawrence Miller had a certificate of deposit in the amount of \$230,000.00 with the International Services Division of the First National City Bank (now Citibank N.A.) which is located at 399 Park Avenue, New York, New York. Lawrence Miller made arrangements with the First National City Bank to have the interest earned from the certificate of deposit credited to a checking account in his name. Therefore the bank statement from Lawrence Miller's checking account would reflect the interest earned on the certificate of deposit.

6. The same \$230,000.00 was on deposit during 1973 and 1974. Lawrence Miller earned interest on the certificate of deposit on an irregular basis because interest would not be credited until it matured. On occasion interest would be "locked in" for periods of from one to four months. The interest which Lawrence Miller earned would also depend on the prevailing interest rate and the length of time which the principal was "locked in."

7. Bank statements introduced by Lawrence Miller at the hearing revealed that in 1973 Lawrence Miller was credited with interest on the certificate of deposit in the amount of \$11,778.00 as follows:

January 11, 1973	\$2,617.48
July 2, 1973	3,995.86
August 7, 1973	1,582.33
September 10, 1973	1,715.55
September 12, 1973	1,866.78

8. Bank statements introduced by Lawrence Miller at the hearing revealed that in 1974 Lawrence Miller was credited with interest of \$20,186.44 on the certificate of deposit as follows:

January 2, 1974	\$7,993.29
February 4, 1974	1,772.26
March 5, 1974	1,713.97
April 4, 1974	1,583.22
August 1, 1974	7,123.70

9. In the 1960's Lawrence Miller started shipping perishable food through the American Translantic Company to the Sogimex Company (hereafter Sogimex) in Senegal. The owner of Sogimex was a Mr. Bialimo. Mr. Bialimo was in need of cash in order to permit Sogimex to continue doing business with Lawrence Miller. Lawrence Miller was interested in continuing business with Sogimex because of the potential for making money. Therefore, Lawrence Miller loaned 75,000 new francs to Sogimex in the 1960's. Thereafter Lawrence Miller shipped merchandise to Sogimex. Lawrence Miller was paid for the merchandise.

10. The foregoing debt was acknowledged in a letter dated January 1, 1972 from Roger Galimont, the director of Sogimex, to Lawrence Miller. This letter contained a promise that, upon the liquidation of Sogimex, the money owed to Lawrence Miller, amounting to 75,000 new francs, would be paid in three installments, one installment being due in each of the years 1973, 1974, and 1975.

11. Prior to the time when the installments became due Mr. Gallimont was no longer in business. When Lawrence Miller found out that Mr. Gallimont was no longer in business, he attempted, without success, to collect the amount that he was owed. The installments were not paid when they became due. In a letter dated July 20, 1978 petitioner was advised by Alain Moulard, a lawyer in Casablanca, that he was unable to locate any assets owned by Sogimex or Mr. Gallimont and, therefore, it was not possible to recover the amount owed.

12. During the 1974 to 1975 interim session of the College of White Plains of Pace University, petitioner Anna Miller, at her own expense, accompanied and chaperoned a group of students to Italy. In addition to traveling to Italy to accompany and chaperon students, said petitioner went to Italy to improve her proficiency in foreign languages. Petitioners claimed a deduction for this

trip of \$1,004.00 on their U.S. Individual Income Tax Return for 1975. Following an audit, \$480.00 of this deduction was allowed as being reasonable.

At the hearing Lawrence Miller presented a receipt from the Hotel Royal of Florence, Italy. This receipt indicates that on January 25, 1975 720,000 lira was paid for Anna Miller's stay of twenty-four days. This receipt represents an expense of about \$1,160.00.

13. The husband of Anna Miller's stepmother, Ms. Maria Spadoni Campedelli, died leaving Ms. Campedelli and Anna Miller certain property but he did not leave Ms. Campedelli any cash. Therefore, beginning in 1956, Anna Miller began advancing funds to Ms. Campedelli in order for Ms. Campedelli to meet her needs.

This debt was acknowledged in a letter dated December 4, 1971 from Ms. Campedelli to Anna Miller. The letter stated, in substance, that Ms. Campedelli borrowed \$12,000.00 and that as soon as she could sell certain property she would have enough money to repay the debt.

Anna Miller deducted \$198.50 in 1974 and \$2,950.00 in 1975 as bad debts on their joint New York State Income Tax resident returns. In a letter dated March 22, 1978 Anna Miller was informed by an attorney in Italy that Ms. Campedelli was without funds and that it is impossible to recover the debt owed by her. It was at this time that Anna Miller considered the debt worthless.

14. Petitioners own a split level home and on the second floor of their home there is a room containing a desk, telephone, and books. This room is used primarily as an office for Anna Miller. Anna Miller used this office for telephone calls with fellow teachers and students and to correct papers and

prepare lessons. Anna Miller also had an office at the college. Petitioners deducted \$600.00 on their 1974 and 1975 joint U.S. Individual Income Tax Return for the office expenses of Anna Miller. Petitioners arrived at the figure of \$600.00 upon concluding that \$50.00 a month was reasonable in view of the kind, location and comfort of petitioners' home.

15. Petitioners claimed a deduction of \$501.50 as "telephone expenses" of Anna Miller on their joint U.S. Individual Income Tax Return for 1975. Anna Miller would examine the telephone bills to determine which calls were business calls. Neither receipts nor cancelled checks were presented to establish that the amounts claimed were paid. Further, no evidence was presented to establish that the amounts claimed were business calls. Lastly, no evidence was presented to establish that Anna Miller's employer required her to maintain a telephone in her home.

CONCLUSIONS OF LAW

A. That Tax Law section 689(e) provides, in part, that the burden of proof shall be on the Tax Commission on the issue of "whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed...". In view of the demonstrative and testimonial evidence presented at the hearing noted in Findings of Fact "5" through "8", the Audit Division has failed to sustain its burden of proof of establishing that petitioners had unreported income in 1974. Therefore, the increase in the deficiency asserted in the "Notice of Claim" dated January 11, 1980 is cancelled.

B. That the burden of proof is upon the taxpayer to establish that a bad debt became worthless in the year in which it was deducted (5 Mertens, Law of Federal Income Taxation, §30.79). In view of the letter dated July 20, 1978

from Mr. Alain Moulard to Lawrence Miller stating that the debt was uncollectible, petitioners have failed to sustain their burden of proof of substantiating that the debt acknowledged by Mr. Gallimont to Lawrence Miller became worthless in 1974 and 1975.

C. That assuming, without deciding, that the advances by Anna Miller to Ms. Campedelli were loans rather than gifts, petitioners have failed to sustain their burden of proof of establishing that the debt became worthless in the years claimed.

D. That in view of the receipt from the Hotel Royal showing the date, location, and amount spent, petitioners have sustained their burden of proof of substantiating the amount claimed as a deduction for travel expenses for Anna Miller arising from her trip to Italy.

E. That since petitioners have not presented any records establishing the correctness of the amount claimed for office expense, they have failed to sustain their burden of proof of substantiating the amount claimed as a deduction for the office expenses of Anna Miller. Moreover, petitioners have failed to establish that the office in the home was required as a condition of Anna Miller's employment (see Matter of David S. Levitman, State Tax Comm., May 4, 1979).

F. That since petitioners have not submitted any records of their telephone expenses, petitioners have failed to sustain their burden of proof by substantiating the amount they claimed as a "telephone expense" deduction for the year 1975. In addition, petitioners have failed to establish that a telephone in the home was required by Anna M. Miller's employer (see Hicks v. Commissioner, 19 Tax Ct. Mem. Dec. (CCH) 230).

G. That the petition of Lawrence L. Miller and Anna M. Miller is granted to the extent indicated in Conclusions of Law "A" and "D" and is, in all other respects, denied.

DATED: Albany, New York
JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER