

STATE OF NEW YORK

STATE TAX COMMISSION

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|--|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| JAMES R. PETERSON and CARMEN C. PETERSON | : | DECISION |
| for Redetermination of a Deficiency or for | : | |
| Refund of Personal Income Tax under Articles | : | |
| 22 and 30 of the Tax Law for the Year 1976. | : | |

Petitioners, James R. Peterson and Carmen C. Peterson, 265 Riverside Drive, Apt. 7D, New York, New York 10025, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File No. 27658).

A small claims 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 December 4, 1981 at 9:00 A.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (James F. Morris, Esq., of counsel).

ISSUES

I. Whether petitioner Carmen C. Peterson's activities as a singer and actress were engaged in for profit.

II. Whether expenses claimed with respect to said activities are properly deductible as ordinary and necessary expenses paid or incurred in carrying on a trade or business.

FINDINGS OF FACT

1. Petitioners, James R. Peterson and Carmen C. Peterson, timely filed a combined New York State Income Tax Resident Return (with New York City personal

income tax) for the year 1976, wherein Carmen C. Peterson (hereinafter petitioner) claimed business expenses of \$6,542.00 incurred in connection with her occupation described as "singer-actress". Gross income derived by petitioner from said occupation was \$2,299.00.

2. On September 28, 1978, the Audit Division issued a Statement of Audit Changes, wherein it disallowed \$4,243.00 of business expenses claimed by petitioner. (Such amount representing the portion of expenses claimed which were in excess of income reported.) Grounds for said disallowance were that "[e]xpenses incurred in increasing prestige and establishing professional reputation (for wife) are non-deductible personal expenses." Accordingly, on March 5, 1979, separate notices of deficiency were issued for New York State and New York City purposes. One asserted additional New York State personal income tax of \$435.12, plus interest of \$75.84, for a total due of \$510.96. The second such notice asserted additional New York City personal income tax of \$131.06, plus interest of \$22.85, for a total due of \$153.91.

3. The expenses at issue were claimed as miscellaneous deductions and breakdown as follows:

| <u>Deduction</u> | <u>Amount Claimed</u> |
|---|-----------------------|
| Voice lessons | \$ 595 |
| Voice and drama coachings, audition and accompanists' fees | 425 |
| Voice studio and office | 1,123 |
| Drama and dance classes | 282 |
| Agents' fees | 139 |
| Music and plays | 267 |
| Unreimbursed travel, lodging and food expenses | 917 |
| Telephone and telephone answering | 583 |
| Costumes and make-up | 1,024 |
| Photography, printing, supplies and postage | 275 |
| Miscellaneous (tickets, entertainment, etc.) | 912 |
| Total | <u>\$6,542</u> |

Substantiation of the aforestated deductions is not at issue herein.

4. Petitioner contended that her singing and acting activities were engaged in with the objective of making a profit and that her claimed expenses were ordinary, necessary, vital and usual to her occupation.

5. Petitioner graduated from the Juilliard School of Music in 1969 with a Bachelor of Music degree. Subsequently, she spent a year at Memphis State University as a graduate assistant in the Opera Theatre Department.

6. Petitioner commenced her singing and acting career in 1973. She has never treated said career as a matter of hobby or recreation.

7. Petitioner is a member of Actors Equity Association, American Federation of Television and Radio Artists and the Screen Actors Guild.

8. Since 1973, petitioner has devoted her full time to the pursuit of singing and acting engagements. During times she was not actually working, she was actively pursuing work and studying with distinguished voice and acting teachers. Petitioner pursued work by "making rounds" to distribute her photo resume to casting directors and other individuals active in the business.

9. Petitioner has been represented by some of the most prominent agents in the field. It was necessary to have an agent to secure auditions. She has unsuccessfully been auditioned for "West Side Story", "The King and I" and other outstanding musical revivals of the past. Acceptance for such roles would have produced substantial earnings.

10. Petitioner has actively pursued roles in such high paying productions as Broadway shows, commercials and soap operas.

11. Petitioner has appeared in showcase productions and backer's auditions. Such productions, which are usual in the theatrical business, offer no direct compensation, but rather they offer real future possibilities since they give an

actor the opportunity to be seen by producers and prospective financial backers of theatrical productions.

12. During 1976, petitioner appeared in a backer's audition for the show "Mandragala". Additionally, she has appeared in four other productions during 1976.

13. Petitioner has sustained losses from her singing and acting activities from 1973 through 1978. Taxable year 1979 was a breakeven year and in 1980 petitioner's activities produced a small profit.

14. To date petitioner has appeared in several soap operas, commercials and films.

CONCLUSIONS OF LAW

A. That the Personal Income Tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references to the corresponding sections of Article 30.

B. That Internal Revenue Code section 183(d) provides in pertinent part that:

"Presumption. -- If the gross income derived from an activity for 2 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity then, unless the Secretary establishes to the contrary, such activity shall be presumed for purposes of this chapter for such taxable year to be an activity engaged in for profit."

Section 183(d) provides criteria for forming a presumption that an activity was engaged in for profit. It does not, however, provide criteria for a converse presumption. Accordingly, section 183(d) may not be used as authority for determining that an activity was not engaged in for profit.

C. That Internal Revenue Code section 183(c) defines an "activity not engaged in for profit" as:

"any activity other than one with respect to which deductions are allowable for the taxable year under section 162 or under paragraph (1) or (2) of section 212."

D. That Internal Revenue Code section 162(a) provides in pertinent part that with respect to trade or business expenses:

"There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business."

E. That petitioner's business expenses attributable to her singing and acting activities were clearly ordinary and necessary for the production of income and usual to the nature of her business. Such expenses were not directly incurred for the purpose of increasing prestige or establishing her professional reputation. Such benefits are realized when petitioner's primary goal of realizing a profit is attained. Accordingly, since petitioner's claimed business expenses are allowable under Internal Revenue Code Section 162, her activities are deemed to have been engaged in for profit during taxable year 1976, within the meaning and intent of Internal Revenue Code section 183(c).

F. That the petition of James R. Peterson and Carmen C. Peterson is granted and the notices of deficiency dated March 5, 1979 are hereby cancelled.

DATED: Albany, New York

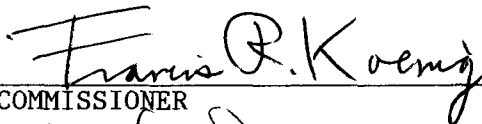
STATE TAX COMMISSION

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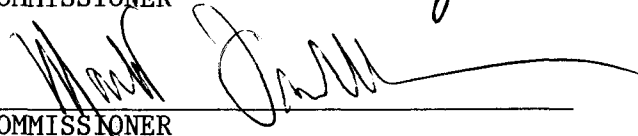
ACTING PRESIDENT



COMMISSIONER



COMMISSIONER



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

James R. Peterson
and Carmen C. Peterson : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Year 1976.

State of New York
County of Albany

David Parchuck, 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 18th day of February, 1983, he served the within notice of 690 & 1312 by certified mail upon James R. Peterson, and Carmen C. Peterson the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James R. Peterson
and Carmen C. Peterson
265 Riverside Dr., #7D
New York, NY 10025

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
18th day of February, 1983.

David Parchuck

Chamie P. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

February 18, 1983

James R. Peterson
and Carmen C. Peterson
265 Riverside Dr., #7D
New York, NY 10025

Dear Mr. & Mrs. Peterson:

Please take notice of the 690 & 1312 of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 4 months 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 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative