

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Stephen C. & Belinda Kaye	: : : : : : :	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 1975 & 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 11th day of May, 1983, he served the within notice of Decision by certified mail upon Stephen C. & Belinda Kaye, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen C. & Belinda Kaye
42 W. 70th St.
New York, NY 10023

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
11th day of May, 1983.

David Parchuck

Conrad A. Hagelund

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

May 11, 1983

Stephen C. & Belinda Kaye
42 W. 70th St.
New York, NY 10023

Dear Mr. & Mrs. Kaye:

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
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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
STEPHEN C. KAYE AND BELINDA KAYE	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles	:	
22 and 30 of the Tax Law for the Years 1975	:	
and 1976.	:	

Petitioners, Stephen C. Kaye and Belinda Kaye, 42 West 70th Street, New York, New York 10023, 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 for the years 1975 and 1976 and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File Nos. 29904, 29905 and 29906).

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 April 27, 1982 at 10:45 A.M. Petitioner Stephen C. Kaye appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Anna Colello, Esq., of counsel).

ISSUES

I. Whether adjustments made to various business and non-business expenses were proper.

II. Whether adjustments made to reported capital gains and losses were proper.

FINDINGS OF FACT

1. Petitioners, Stephen C. Kaye and Belinda Kaye, timely filed a New York State Combined Income Tax Return for the year 1975. For taxable year 1976 they timely filed a combined New York State Income Tax Resident Return with New York

City Personal Income Tax. On each of said returns, Stephen C. Kaye, (hereinafter petitioner) reported business income from his law practice and real estate activities. The major portion of Belinda Kaye's income was derived from the receipt of substantial dividends. Itemized deductions claimed were allocated entirely to Mrs. Kaye.

2. On December 29, 1979, the Audit Division issued a Statement of Personal Income Tax Audit Changes to petitioner wherein, based on a Schedule of Audit Adjustments attached thereto, the following adjustments were made:

SCHEDULE C ADJUSTMENTS DISALLOWED AS UNSUBSTANTIATED

<u>1975</u>		
<u>ITEM</u>	<u>ADJUSTMENT</u>	
Auto Rental	\$ 471.00	
Insurance	247.00	
Dues	232.00	
Miscellaneous (other)	2,569.00	
Addition Error On Return	130.00	
Total		\$3,649.00
Capital Loss - Unsubstantiated		21.00
Total Adjustment		<u>\$3,670.00</u>
<u>1976</u>		
Dues	\$ 342.00	
Office Expense	2,021.00	
Other Expense	<u>1,986.00</u>	
Total		\$4,349.00
Capital Loss - Unsubstantiated		<u>1,447.50</u>
Total Adjustment		<u>\$5,796.50</u>
New York City Adjustment		<u>\$5,796.50</u>

Accordingly, a Notice of Deficiency was issued against petitioner on February 14, 1980 asserting additional New York State and New York City personal income tax of \$907.82 plus penalty and interest of \$269.14, for a total due of \$1,176.96. Said penalty was imposed pursuant to section 685(c) of the Tax Law for under-payment of estimated tax.

3. On December 29, 1979, the Audit Division issued a Statement of Personal Income Tax Audit Changes to Belinda Kaye wherein, based on a Schedule of Audit Adjustments attached thereto for each year at issue, the following adjustments were made:

<u>ITEM</u>	<u>1975</u>	<u>ADJUSTMENT</u>
Sales Tax		\$ 600.00
Casualty Loss		100.00
Home Office		625.00
Modification - Allocation Of Custody Fees And Advisory Fees For Nontaxable Income		296.00
Rental Expenses - Disallowed As Personal		<u>1,368.00</u>
Total Adjustment		<u>\$ 2,989.00</u>
	<u>1976</u>	
Capital Gains		\$ 2,462.00
Capital Gain Modification		757.00
Short Term Gain - Corrected		1,882.00
Sales Tax		1,500.00
Contributions		382.00
Travel - Charity		100.00
Modification - Allocation Of Custody Fees And Advisory Fees For Nontaxable Income		658.00
Rental Expenses - Disallowed As Personal		<u>2,982.00</u>
Total Adjustment		<u>\$10,723.00</u>

Accordingly, the following notices of deficiency were issued on February 14, 1980.

- (a) For 1975¹ - Asserting additional New York State personal income tax of \$461.08, plus penalty [section 685(c)] and interest of \$110.89, for a total due of \$571.97.
- (b) For 1976¹ - Asserting additional New York State and New York City personal income taxes of \$2,108.16, plus penalty [section 685(c)] and interest of \$764.36, for a total due of \$2,872.52.

4. Petitioners executed a consent form extending the period for assessment of 1975 taxes to April 15, 1980.

5. During the hearing petitioners conceded those adjustments relative to capital gains and losses and allocation of custody and advisory fees.

6. During the year 1975 petitioner Stephen C. Kaye became self-employed and commenced conducting his law practice from an office located at 535 Madison Avenue, New York City. Additionally, petitioner was engaged in real estate

¹ The Notice of Deficiency marked "1976" is properly applicable to 1975 and the Notice of Deficiency marked "1975, 1976", is properly applicable to 1976.

brokerage activities. His business income, as reported on his Federal schedules C for each year at issue, was not broken down between said activities.

7. Petitioner's claimed "auto rental" expenses for 1975 of \$1,400.00 were allowed to the extent of \$929.00, thereby yielding an adjustment of \$471.00. Petitioner offered no evidence which would warrant allowance of an amount greater than that allowed on audit.

8. Petitioner's claimed "insurance" expense for 1975 of \$300.00 was allowed to the extent of \$53.00, thereby yielding an adjustment of \$247.00. Petitioner offered no evidence which would warrant allowance of an amount greater than that allowed on audit.

9. Petitioner's claimed "dues" expense for 1975 of \$432.00 was allowed to the extent of \$200.00, thereby yielding an adjustment of \$232.00. Petitioner offered no evidence which would warrant allowance of an amount greater than that allowed on audit.

10. Petitioner's claimed "other" expenses for 1975 of \$3,866.00 were allowed to the extent of \$1,297.00, thereby yielding an adjustment of \$2,569.00. He claimed that such expense was comprised of automobile expenses, additional office expenses and various expenses listed in his "journal". Such journal, which was submitted into evidence, reports petitioner's business cash receipts and disbursements for both years at issue; however, it is highly illegible and is not supported by original documentation such as bills, receipts or checks.

11. Petitioner did not contest the 1975 adjustment for "Addition Error on Return" of \$130.00.

12. Petitioner's claimed "dues" expense for 1976 of \$642.50 was allowed to the extent of \$300.50, thereby yielding an adjustment of \$342.00. Petitioner offered no evidence which would warrant allowance of an amount greater than that allowed on audit.

13. Petitioner's claimed "office expense" for 1976 of \$3,000.00 was allowed to the extent of \$979.00, thereby yielding an adjustment of \$2,021.00. Petitioner offered no evidence which would warrant allowance of an amount greater than that allowed on audit.

14. Petitioner's claimed "other" expenses for 1976 of \$2,864.75 were allowed to the extent of \$878.75, thereby yielding an adjustment of \$1,986.00. Petitioner offered no evidence which would warrant allowance of an amount greater than that allowed on audit.

15. The general sales tax deduction claimed for 1975 of \$1,500.00 was allowed to the extent of \$900.00, thereby yielding an adjustment of \$600.00. Pursuant to the audit workpapers, said allowance was computed using the Optional State Sales Tax Table provided by the Internal Revenue Service. Petitioner submitted a receipt evidencing a sales tax payment of \$84.47 on the purchase of an automobile during said year.

16. The casualty or theft loss deduction claimed for 1975 of \$100.00 was disallowed in its entirety. No documentation was offered to establish that such loss had, in fact, occurred. Furthermore, petitioner testified that he "lost the watch while working in the countryside" and that it "fell off".

17. The home office deduction claimed for 1975 of \$725.00 was allowed to the extent of \$100.00, thereby yielding an adjustment of \$625.00. Petitioner contended that he used a portion of his bedroom for his real estate and investment activities. He claimed that such space contained a desk and file cabinets. Petitioner computed the amount claimed for this deduction by multiplying the approximate square footage used by the going commercial rate for office space.

18. The rental expense adjustments of \$1,368.00 for 1975 and \$2,982.00 for 1976 were made with respect to a brownstone owned and partially occupied

by petitioners. It was determined on audit that 60 percent of the building was used for rental income production purposes while the balance was allocable to personal purposes. The adjustments herein represent the disallowance of 40 percent of the rental expenses, exclusive of real estate taxes and mortgage interest.

19. Petitioners occupied the first two floors of the brownstone. The third floor and a portion of the basement were used for rental purposes. Petitioner contended that the amount claimed for repairs in 1975 of \$1,009.00, was applicable in its entirety to the rental apartments. Documentation submitted established that only one repair of \$286.20 was fully applicable to the rental portion.

20. For taxable year 1976, petitioner contended that the total amount claimed for painting of \$1,705.50 was applicable in its entirety to the rental apartments; however, documentation submitted does not support this contention.

21. The general sales tax deduction claimed for 1976 of \$2,400.00 was allowed to the extent of \$900.00, thereby yielding an adjustment of \$1,500.00. Pursuant to the audit workpapers, said allowance was computed using the Optional State Sales Tax Table provided by the Internal Revenue Service. Petitioner contended that he is entitled to claim, in addition to the amount provided in said table, the sales tax paid for materials and supplies used in renovating a house in the country. He claimed that the renovation cost approximately \$75,000.00. Receipts were submitted indicating that during 1976 the total sales taxes paid for this purpose was \$873.99.

22. Contributions claimed during 1976 of \$1,335.00 were allowed to the extent of \$953.00, thereby yielding an adjustment of \$382.00. During the hearing, petitioner substantiated such contributions to the full extent claimed.

23. Petitioner's claimed deduction of \$100.00 for "travel - charity" was disallowed in its entirety on audit. Petitioner testified that this expense relates to his attendance at twenty five fund raising meetings of the West Side Montessori School and the West Side Educational Trust.

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 (though uncited) to the corresponding sections of Article 30.

B. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the tax Law to show that he is properly entitled to greater "Schedule C" deductions for auto rental, insurance, dues, office expense and "other" expenses than those amounts allowed on audit. Accordingly, the adjustments made to said deductions are hereby sustained.

C. That the adjustments to capital gains and losses and custody and advisory fees are sustained as conceded by petitioner (Finding of Fact "5" supra).

D. That the adjustment for "Addition Error on Return" is sustained based on petitioner's failure to contest same (Finding of Fact "11" supra).

E. That the adjustment to "sales tax" for 1975 of \$600.00 is reduced by \$84.47, said amount representing additional sales tax paid on the purchase of an automobile.

F. That Internal Revenue Code section 165(c)(3) provides that a deduction is allowable for: "losses of property not connected with a trade or business, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft." Accordingly, since petitioner's claimed loss in 1975 did not constitute a casualty or theft, (Finding of Fact "16", supra) the adjustment disallowing such loss is sustained.

G. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he is properly entitled to a greater deduction for "home office" than that allowed on audit. Accordingly the adjustment to said deduction is sustained.

H. That the rental expense adjustment for 1975 of \$1,368.00 is reduced to \$1,253.60 (Findings of Fact "18" and "19" supra).

I. That the rental expense adjustment for 1976 of \$2,982.00 is sustained.

J. That the adjustment to "sales tax" for 1976 of \$1,500.00 is sustained since the sales tax substantiated of \$873.99 is less than the amount allowed per the sales tax table. Furthermore, there is no authority for claiming sales taxes paid on a house renovation in addition to the amount allowable pursuant to the sales tax table.

K. That the adjustment to "contributions" for 1976 of \$382.00 is cancelled. (Finding of Fact "22" supra).

L. That the adjustment to "travel charity" for 1976 of \$100.00 is cancelled.

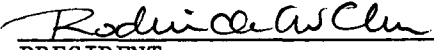
M. That the petition of Stephen C. Kaye and Belinda Kaye is granted to the extent provided in Conclusions of Law "E", "H", "K" and "L" supra, and except as so granted, said petition is, in all other respects, denied.

N. That the Audit Division is hereby directed to modify the notices of deficiency dated February 14, 1980 to be consistent with the decision rendered herein.


DATED: Albany, New York

MAY 11 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER