

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Steve J. Savarese	:	
and Martha Savarese	:	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

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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon Steve J. Savarese, and Martha Savarese, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Steve J. Savarese
and Martha Savarese
R.R. #2, Box 353 D
Sackett Lake, NY 12701

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
3rd day of January, 1983.

Guthy Pfaffenbach

J. Vredenburg

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

January 3, 1983

Steve J. Savarese
and Martha Savarese
R.R. #2, Box 353 D
Sackett Lake, NY 12701

Dear Mr. & Mrs. Savarese:

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 & 1312 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	:	
STEVE J. SAVARESE and MARTHA SAVARESE	:	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, Steve J. Savarese and Martha Savarese, R.R. #2, Box 353D, Sackett Lake, New York 12701, 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. 26443).

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 March 22, 1982 at 10:45 A.M. Petitioner Steve J. Savarese appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether, and if so to what extent, petitioner Steve J. Savarese is properly entitled to claim an adjustment to income for employee business expenses.

II. Whether, and if so to what extent, petitioners are properly entitled to a theft loss deduction.

FINDINGS OF FACT

1. Petitioners, Steve J. Savarese and Martha Savarese, timely filed a joint New York State Income Tax Resident Return (with New York City Personal

Income Tax) for the year 1976, whereon they claimed an adjustment to income of \$6,511.00 for employee business expenses allegedly incurred by Steve J. Savarese, and a net deduction of \$950.00 for a theft loss.

2. On August 16, 1977, the Audit Division issued a Statement of Audit Changes to petitioners wherein, as the result of their failure to appear for a scheduled audit, the amounts claimed for employee business expenses and the theft loss were disallowed in their entirety. Additionally, a statutory medical adjustment was made to the extent of three (3) percent of the disallowed adjustment to income of \$6,511.00 pursuant to section 213(a)(1) of the Internal Revenue Code. However, since said adjustment was not contested by petitioners, it is therefore not at issue herein. Accordingly, a Notice of Deficiency was issued against petitioners on November 28, 1978 asserting additional New York State personal income tax of \$464.43, additional New York City personal income tax of \$171.86, plus interest of \$86.97, for a total due of \$723.26.

3. The employee business expenses at issue of \$6,511.00 were claimed with respect to the employment of Steve J. Savarese (hereinafter petitioner). Said expenses were comprised of \$351.00 claimed for travel expenses while away from home on business and \$6,160.00 claimed for automobile expenses. No evidence, documentary or otherwise, was offered with respect to the travel expenses claimed of \$351.00.

4. During the year at issue, petitioner was employed by the New York City Department of Housing Preservation and Development (HPD) as a Senior Real Estate Manager. As such, he served as HPD's field representative for approximately forty (40) public improvement and urban renewal sites in the boroughs of Queens and Staten Island.

5. Petitioner's duties required him to spend most of his time in the field visiting his assigned sites. He was required to personally report to his South Jamaica, Queens office at both the start and conclusion of each day.

6. Petitioner used two personally-owned automobiles for business purposes. He claimed that 61,300 total miles were accumulated by both cars, of which 50,500 miles were claimed to have been driven for business purposes. Petitioner testified that he drove approximately one hundred (100) miles per day for business purposes.

7. Prior to the year at issue petitioner was reimbursed for automobile expenses. Such reimbursement was in the amount of \$3.60 per day for a maximum of ten (10) days per month. Subsequently, it was increased to \$4.80 per day for a maximum of ten (10) days per month. Said reimbursement was eliminated during 1974 or 1975 due to the budget crisis New York City was experiencing at that time.

8. Petitioner computed his automobile expenses by the optional method using the standard mileage rate.

9. Petitioner submitted Master Charge bills evidencing total automobile-related charges during 1976 of \$324.65; however, he was unable to show what part was attributable to business use.

10. No documentation was submitted by petitioner to evidence either his claimed total mileage driven or his claimed business mileage driven during 1976.

11. Petitioners' claimed theft loss was the result of an alleged burglary to his home on June 3, 1976. Although petitioner claimed that a report had been filed with the police department, he failed to produce a copy of such report during the hearing held herein. He contended that a claim was not filed

with his insurance company since he had a \$1,000.00 deductible clause and accordingly did not qualify for reimbursement.

12. Items stolen pursuant to petitioner were a television, typewriter, leather jacket, watch, camera and gold necklace. No evidence was submitted to establish the value of said items before the theft.

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 incurred employee business expenses in 1976 for travel while away from home. Accordingly, the adjustment disallowing this claimed expense of \$351.00 is sustained.

C. That petitioner has failed to sustain his burden of proof, required pursuant to section 689(e) of the Tax Law, to show the extent his two automobiles were used for business purposes during 1976. Accordingly, the adjustment disallowing petitioner's claimed automobile expenses of \$6,160.00 is sustained.

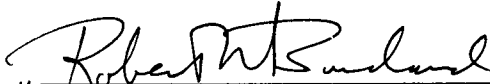
D. That petitioners have failed to sustain their burden of proof, required pursuant to section 689(e) of the Tax Law, to show that they are properly entitled to a deduction for a theft loss. Accordingly, the adjustment disallowing such loss is sustained.


E. That the petition of Steve J. Savarese and Martha Savarese is denied and the Notice of Deficiency dated November 28, 1978 is hereby sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 3 1983


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER

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

January 3, 1983

Steve J. Savarese
and Martha Savarese
R.R. #2, Box 353 D
Sackett Lake, NY 12701

Dear Mr. & Mrs. Savarese:

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 & 1312 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
STEVE J. SAVARESE and MARTHA SAVARESE
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.

DECISION

Petitioners, Steve J. Savarese and Martha Savarese, R.R. #2, Box 353D, Sackett Lake, New York 12701, 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. 26443).

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 March 22, 1982 at 10:45 A.M. Petitioner Steve J. Savarese appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether, and if so to what extent, petitioner Steve J. Savarese is properly entitled to claim an adjustment to income for employee business expenses.

II. Whether, and if so to what extent, petitioners are properly entitled to a theft loss deduction.

FINDINGS OF FACT

1. Petitioners, Steve J. Savarese and Martha Savarese, timely filed a joint New York State Income Tax Resident Return (with New York City Personal

Income Tax) for the year 1976, whereon they claimed an adjustment to income of \$6,511.00 for employee business expenses allegedly incurred by Steve J. Savarese, and a net deduction of \$950.00 for a theft loss.

2. On August 16, 1977, the Audit Division issued a Statement of Audit Changes to petitioners wherein, as the result of their failure to appear for a scheduled audit, the amounts claimed for employee business expenses and the theft loss were disallowed in their entirety. Additionally, a statutory medical adjustment was made to the extent of three (3) percent of the disallowed adjustment to income of \$6,511.00 pursuant to section 213(a)(1) of the Internal Revenue Code. However, since said adjustment was not contested by petitioners, it is therefore not at issue herein. Accordingly, a Notice of Deficiency was issued against petitioners on November 28, 1978 asserting additional New York State personal income tax of \$464.43, additional New York City personal income tax of \$171.86, plus interest of \$86.97, for a total due of \$723.26.

3. The employee business expenses at issue of \$6,511.00 were claimed with respect to the employment of Steve J. Savarese (hereinafter petitioner). Said expenses were comprised of \$351.00 claimed for travel expenses while away from home on business and \$6,160.00 claimed for automobile expenses. No evidence, documentary or otherwise, was offered with respect to the travel expenses claimed of \$351.00.

4. During the year at issue, petitioner was employed by the New York City Department of Housing Preservation and Development (HPD) as a Senior Real Estate Manager. As such, he served as HPD's field representative for approximately forty (40) public improvement and urban renewal sites in the boroughs of Queens and Staten Island.

5. Petitioner's duties required him to spend most of his time in the field visiting his assigned sites. He was required to personally report to his South Jamaica, Queens office at both the start and conclusion of each day.

6. Petitioner used two personally-owned automobiles for business purposes. He claimed that 61,300 total miles were accumulated by both cars, of which 50,500 miles were claimed to have been driven for business purposes. Petitioner testified that he drove approximately one hundred (100) miles per day for business purposes.

7. Prior to the year at issue petitioner was reimbursed for automobile expenses. Such reimbursement was in the amount of \$3.60 per day for a maximum of ten (10) days per month. Subsequently, it was increased to \$4.80 per day for a maximum of ten (10) days per month. Said reimbursement was eliminated during 1974 or 1975 due to the budget crisis New York City was experiencing at that time.

8. Petitioner computed his automobile expenses by the optional method using the standard mileage rate.

9. Petitioner submitted Master Charge bills evidencing total automobile-related charges during 1976 of \$324.65; however, he was unable to show what part was attributable to business use.

10. No documentation was submitted by petitioner to evidence either his claimed total mileage driven or his claimed business mileage driven during 1976.

11. Petitioners' claimed theft loss was the result of an alleged burglary to his home on June 3, 1976. Although petitioner claimed that a report had been filed with the police department, he failed to produce a copy of such report during the hearing held herein. He contended that a claim was not filed

with his insurance company since he had a \$1,000.00 deductible clause and accordingly did not qualify for reimbursement.

12. Items stolen pursuant to petitioner were a television, typewriter, leather jacket, watch, camera and gold necklace. No evidence was submitted to establish the value of said items before the theft.

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 incurred employee business expenses in 1976 for travel while away from home. Accordingly, the adjustment disallowing this claimed expense of \$351.00 is sustained.

C. That petitioner has failed to sustain his burden of proof, required pursuant to section 689(e) of the Tax Law, to show the extent his two automobiles were used for business purposes during 1976. Accordingly, the adjustment disallowing petitioner's claimed automobile expenses of \$6,160.00 is sustained.

D. That petitioners have failed to sustain their burden of proof, required pursuant to section 689(e) of the Tax Law, to show that they are properly entitled to a deduction for a theft loss. Accordingly, the adjustment disallowing such loss is sustained.

E. That the petition of Steve J. Savarese and Martha Savarese is denied and the Notice of Deficiency dated November 28, 1978 is hereby sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 3 1983


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

JAN 26 1983

RECEIVED

UNCLAIMED

Steve J. Savarese
and Martina Savarese
P.R. #2, Box 353 D
Sackett Lake NY

2807 Mott Ave
Far Rockaway NY 11691

FINAL NOTICE