



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

July 18, 1984

William & Ruth Lasky  
475 F.D.R. Dr., Apt. L506  
New York, NY 10002

Dear Mr. & Mrs. Lasky:

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 and Chapter 46, Title T of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
WILLIAM LASKY and RUTH LASKY : DECISION  
for Redetermination of a Deficiency or for :  
Refund of New York State Personal Income and :  
Unincorporated Business Taxes under Articles 22 :  
and 23 of the Tax Law and New York City Personal :  
Income Tax under Chapter 46, Title T of the :  
Administrative Code of the City of New York for :  
the Years 1977 and 1978. :

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 12, 1984 at 9:15 A.M., with additional information to be submitted by February 7, 1984. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

Whether the Audit Division's reconstruction of petitioners' income for the years 1977 and 1978, using cash availability analyses, properly determined that petitioners had additional unreported business income.

FINDINGS OF FACT

1. Petitioners herein, William Lasky and Ruth Lasky<sup>1</sup>, timely filed New York State and New York City income tax resident returns for the years 1977 and 1978. On the 1977 return petitioner reported business income of \$5,355.00 and on his 1978 return petitioner reported business income of \$3,480.00. The business income reported on said returns represents the income generated from petitioner's ownership and operation of a single taxicab in the metropolitan New York City area.

2. On January 6, 1981, the Audit Division issued a Notice of Deficiency to petitioners for 1977 and 1978, imposing additional New York State and New York City personal income tax of \$7,575.25, plus penalty (5% for negligence) and interest of \$2,004.50, for an alleged total due of \$9,579.75. The aforementioned Notice of Deficiency was premised on an explanatory Statement of Personal Income Tax Audit Changes dated October 28, 1980. On said Statement the Audit Division estimated that petitioner had \$30,000.00 of additional unreported business income for each year at issue. Additional unreported business income was estimated since petitioner had failed to supply requested information.

3. A second Notice of Deficiency was issued to petitioners on January 6, 1981. This Notice imposed additional unincorporated business tax of \$2,568.53, plus penalty (5% for negligence) and interest of \$683.33, for an alleged total due of \$3,251.86. The second Notice of Deficiency was premised on an explanatory Statement of Unincorporated Business Tax Audit Changes dated October 28, 1980. On said Statement the Audit Division again estimated that petitioner had

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<sup>1</sup> Ruth Lasky is involved in this proceeding due solely to the filing of joint income tax returns with her husband. Accordingly, the term "petitioner" shall hereinafter refer solely to William Lasky.

\$30,000.00 of additional unreported business income for each year at issue for the same reason as stated in the Statement of Personal Income Tax Audit Changes supra.

4. As the result of a pre-hearing conference conducted pursuant to 20 NYCRR 601.4, the Audit Division revised its estimate of additional unreported business income from \$30,000.00 for each year at issue to \$8,750.00 for 1977 and to \$5,300.00 for 1978. The revised amounts were determined as the result of a field audit of petitioner's books and records. The Audit Division used cash availability analyses to reconstruct petitioner's income for each year at issue since petitioner maintained no records other than a checking account.

5. The Audit Division in its cash availability analyses estimated petitioner's personal living expenses paid by cash in the following manner:

| <u>ITEM</u>                    | <u>1977</u>       | <u>1978</u>         |
|--------------------------------|-------------------|---------------------|
| Food                           | \$2,080.00        | \$2,340.00          |
| Clothing                       | 500.00            | 600.00              |
| Household needs                | 1,040.00          | 1,300.00            |
| Miscellaneous                  | -0-               | 300.00 <sup>2</sup> |
| Car Expenses                   | 800.00            | 550.00              |
| Medical expenses               | 250.00            | 250.00              |
| Entertainment, vacations, etc. | 300.00            | 300.00              |
| TOTAL                          | <u>\$4,970.00</u> | <u>\$5,640.00</u>   |

6. Petitioners are an elderly couple who, during the years at issue, suffered from various physical ailments. Mrs. Lasky spent a considerable amount of time in a hospital during the years 1977 and 1978. Mr. Lasky only drove his taxicab part-time due to his own ailments and due to the serious nature of Mrs. Lasky's illness.

7. At the hearing held herein petitioners testified that their lifestyle was frugal and that they would have spent no more than \$300.00 per year for

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<sup>2</sup> In the auditor's workpapers this figure is shown as \$850.00; however, the Audit Division concedes that the proper figure to be used is \$550.00.

clothing. Petitioners also testified that it was not their habit to take vacations, especially so during the years at issue because of their various illnesses. Petitioners' testimony is found to be credible.

8. During the years in question petitioner owned only one automobile, that being the taxicab. All cash expended by petitioner with respect to the taxicab was included by the Audit Division in its cash availability analyses separately from those estimated personal car expenses shown in Finding of Fact "5" supra. Petitioner asserts that the estimated personal car expenses of \$800.00 for 1977 and \$550.00 for 1978 should be deleted from the audit findings since he owned only one automobile and since all cash expended on said automobile was previously included in the cash availability analyses.

9. Statements made by petitioner at the hearing held herein suggests that he may have had cash available from nontaxable sources (specifically, withdrawal of savings from a credit union account). However, a statement from the credit union does not support that petitioner made any withdrawals from the credit union account other than the withdrawal of the interest earned for which he was given credit.

#### CONCLUSIONS OF LAW

A. That section 689(e) of Article 22 of the Tax Law and section T46-189.0(e) of Title T of the Administrative Code of the City of New York both place the burden of proof upon petitioner, except in three specifically enumerated instances, none of which is applicable in this matter.

B. That petitioner has sustained the burden of proof to show that during the years in question his cash clothing expenses did not exceed \$300.00 per year, that he had no cash personal car expenses and that he had no cash entertainment or vacation expenses. Accordingly, additional income disclosed pursuant

to the cash availability analyses is reduced to \$7,450.00 for 1977 and to \$4,150.00 for 1978. That, except as otherwise noted, petitioner has failed to sustain the burden of proof to show the cash availability analyses are incorrect.

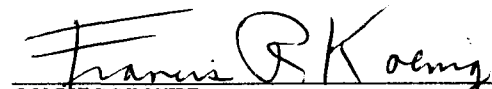
C. That the petition of William Lasky and Ruth Lasky is granted to the extent indicated in Conclusion of Law "B" supra; that the Audit Division is directed to recompute the amount shown due on the notices of deficiency consistent with the conclusions reached herein; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 18 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER