

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Sang Bock & Kilza L. Lee : AFFIDAVIT OF MAILING  
:  
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 Nonresident Earnings Tax under Chapter 46, :  
Title U of the Administrative Code of the City :  
of New York for the Year 1978. :  
\_\_\_\_\_:

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 3rd day of July, 1986, he/she served the within notice of Decision by certified mail upon Sang Bock & Kilza L. Lee the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sang Bock & Kilza L. Lee  
423 Manchester Way  
Wyckoff, NJ 07481

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 July, 1986.

David Parchuck

Janet M. Snay  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

July 3, 1986

Sang Bock & Kilza L. Lee  
423 Manchester Way  
Wyckoff, NJ 07481

Dear Mr. & Mrs. Lee:

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 U 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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
SANG BOCK LEE and KILZA L. LEE	:	DECISION
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	:	
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Title U of the Administrative Code of the City	:	
of New York for the Year 1978.	:	

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Petitioners, Sang Bock Lee and Kilza L. Lee, 423 Manchester Way, Wyckoff, New Jersey 07481, 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 nonresident resident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1978 (File No. 38680).

A hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on March 5, 1986 at 9:30 A.M. Petitioner Sang Bock Lee appeared pro se and for his wife, Kilza L. Lee. The Audit Division appeared by John P. Dugan, Esq., (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioners substantiated certain business expenses deducted by petitioner Sang Bock Lee.

FINDINGS OF FACT

1. Petitioners, Sang Bock Lee and Kilza L. Lee, filed a New York State income tax nonresident return with City of New York nonresident earnings tax for 1978, on which petitioners reported \$98,102.00 in business income. The

business income had been calculated on Federal Schedule C, after deducting \$23,911.00 in business expenses from gross receipts of \$122,013.00.

2. Petitioner Sang Bock Lee is a physician and during the year at issue was a partner in the New York Anesthesiology Group ("the Partnership") located at 10 Nathan D. Perlman Place, New York, New York.

3. In a Statement of Audit Changes dated March 26, 1982, the Audit Division adjusted petitioner Sang Bock Lee's income to agree with that reported on the Federal return filed by the Partnership. The Statement of Audit Changes stated that \$3,222.27 in additional New York State tax and \$186.47 in additional New York City tax were due. On April 14, 1982, the Audit Division issued a Notice of Deficiency against petitioners for \$3,408.74 in additional tax, plus interest.

4. None of the items deducted by Dr. Lee on his schedule C were deducted by the Partnership. Accordingly, after a conference, the Audit Division allowed a portion of the claimed deductions and liability for certain other items was conceded by petitioners.

5. The items remaining at issue at the hearing were as follows:

- (a) Automobile Expense. Dr. Lee claimed \$3,225.00 in automobile expenses. At the conference he was allowed \$1,300.00, or approximately 40% business use. Dr. Lee claimed that he should be allowed the 75% which had been allowed by the Internal Revenue Service for a different year.
- (b) Dues and Publications; Medical Books. Of the \$1,815.00 claimed for dues and publication and the \$700.00 for medical books and publications, Dr. Lee was allowed \$1,300.00.
- (c) Home Office Expense. Dr. Lee claimed \$1,200.00 for "rent on business property" for an office in his home. This amount was disallowed in full.
- (d) Outside Labor Expense. Dr. Lee claimed \$1,400.00 for outside labor expense. This amount was disallowed in full.

- (e) Convention Seminar; Travel and Entertainment. Dr. Lee claimed \$1,956.00 for a convention seminar and \$2,832.00 for travel and entertainment. He was allowed a total of \$2,400.00 against these items.
- (f) Meals on Call. Dr. Lee deducted \$825.00 for meals on call. This amount was disallowed in full.

As a result of the conference, petitioners were allowed \$8,219.00 in business expenses and the tax deficiency was reduced to \$2,772.98.

6. At the hearing, petitioners substantiated that the business use of one of their two automobiles was 60%. Accordingly, the automobile expense deduction is increased to \$1,935.00 from the \$1,300.00 allowed at conference.

7. Petitioners offered no additional evidence as to the dues or publications or medical books or publications.

8. Petitioners showed that Dr. Lee devoted one room of petitioners' ten room home to a home office. The room contained medical reference books and a typewriter. Dr. Lee did not see patients at the home office.

9. At the hearing, petitioners substantiated \$800.00 in outside labor expense for payments made to physicians who covered for Dr. Lee at Beth Israel Medical Center.

10. Petitioners offered no additional evidence as to the convention seminar or travel and entertainment deductions.

11. Dr. Lee was required to remain in Beth Israel Medical Center for a period of 24 hours whenever he was on call. This took place approximately once a week. The \$825.00 in deductions for meals on call represents meal charges incurred by Dr. Lee when he was on call at Beth Israel and was required to eat his meals in the hospital cafeteria.

#### CONCLUSIONS OF LAW

A. That petitioners are not permitted to deduct the cost of meals incurred by petitioner Sang Bock Lee while on call at Beth Israel Medical Center. The

cost of the meals constituted nondeductible personal expenses. Section 162(a) Internal Revenue Code. (See: Walter K. Liang, 34 TCM 1298; William S. Kammerer, 35 TCM 30).


B. That petitioners have sustained their burden of proof under section 689(e) of the Tax Law only to the extent that the automobile expense deduction is increased to \$1,935.00 and that outside labor expense is allowed in the amount of \$800.00. Thus, the expenses allowed at conference of \$8,219.00 are to be increased to \$9,654.00 and the deficiency is to be recomputed accordingly.


C. That the petition of Sang Bock Lee and Kilza L. Lee is granted to the extent indicated in Conclusion of Law "B" and is in all other respects denied. The Notice of Deficiency, as modified, is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 03 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER