

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lewis & Liliane Saltiel : AFFIDAVIT OF MAILING
for Redetermination of Deficiencies or for :
Refunds of New York State Personal Income Tax :
under Article 22 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 1978 and 1979. :

State of New York :

ss.:

County of Albany :

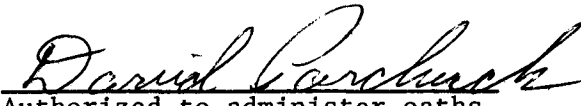
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 29th day of May, 1987, he/she served the within notice of decision by certified mail upon Lewis & Liliane Saltiel the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

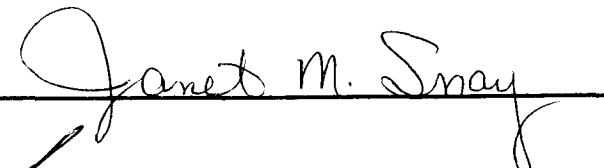
Lewis & Liliane Saltiel
138 Nippon Avenue
Staten Island, NY 10312

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
29th day of May, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Lewis & Liliane Saltiel :

AFFIDAVIT OF MAILING

for Redetermination of Deficiencies or for :
Refunds of New York State Personal Income Tax :
under Article 22 of the Tax Law and New York :
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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 29th day of May, 1987, he served the within notice of decision by certified mail upon Louis F. Brush, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

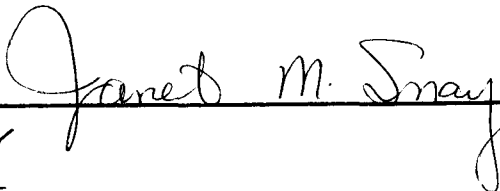
Louis F. Brush
101 Front Street
Mineola, NY 11501

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
29th day of May, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

May 29, 1987

Lewis & Liliane Saltiel
138 Nippon Avenue
Staten Island, NY 10312

Dear Mr. & Mrs. Saltiel:

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, 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

Petitioner's Representative:
Louis F. Brush
101 Front Street
Mineola, NY 11501

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
LEWIS SALTIEL AND LILIANE SALTIEL	:	DECISION
	:	
for Redetermination of Deficiencies or for	:	
Refunds of New York State Personal Income Tax	:	
under Article 22 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 1978 and 1979.	:	

Petitioners, Lewis Saltiel and Liliane Saltiel, 138 Nippon Avenue, Staten Island, New York 10312, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the the Administrative Code of the City of New York for the years 1978 and 1979 (File Nos. 37556 and 44360).

On October 23, 1985, petitioners waived a hearing before the State Tax Commission and agreed to submit this matter for decision based on the Audit Division file, as well as a brief and additional documentation to be submitted by October 8, 1986. After due consideration of the record, the State Tax Commission hereby renders the following decision.

ISSUES

I. Whether the notices of deficiency were issued without any basis and for the sole purpose of extending the period of limitation on assessment.

II. Whether petitioner has substantiated that he was engaged in a trade or business during the year at issue.

III. Whether petitioner has substantiated the character and amount of business expenses claimed as deductions from gross income for the year at issue.

FINDINGS OF FACT

1. Petitioners, Lewis and Liliane Saltiel, jointly filed a New York State and City income tax resident return for 1978. Lewis Saltiel listed his occupation on the return as "sales representative". Liliane Saltiel listed her occupation as "typing service".

2. On their return, petitioners reported business income of \$11,327.00. The following table details the manner in which petitioners computed their reported business income and loss:

LEWIS SALTIEL

<u>Income</u>		
Ames Shower Curtain Co., Inc.	\$17,358.00	
Lenar Fabrics	1,760.00	
Lenar Fabrics	1,820.00	
JPL Textiles	94.00	
		\$21,032.00
<u>Expenses</u>		
Telephone: inside	480.00	
outside	360.00	
Travel	2,081.00	
Meetings, Promotion, Prospecting	2,647.00	
Office Supplies & Stationery & Packaging	221.00	
Accounting	100.00	
Postage, Freight	110.00	
Cabs, Fares	697.00	
Mill Travel	932.00	
Warehousing	129.00	
Samples - Fabric	4,047.00	
Freight	136.00	
Hospitality	681.00	
Swatches	403.00	
Newspapers, Magazines	213.00	
Bank Chgs.	3.00	
		13,240.00
<u>Net Income</u>		\$ 7,792.00

LILIANE SALTIEL

<u>Income</u>		
Dick Bailey Service, Inc.		\$ 8,061.00
<u>Expenses</u>		
Paper & Supplies	397.00	
Pick-up & Delivery Expense	2,031.00	
Outside Services	495.00	
Repairs, Maint.	220.00	
Office Maint.	1,200.00	
Hospitality	183.00	
		<u>4,526.00</u>
<u>Net Income</u>		\$ 3,535.00

3. Attached to petitioners' 1978 return were wage and tax statements as follows:

<u>Employee</u>	<u>Employer</u>	<u>Wages</u>
Lewis Saltiel	Ames Shower Curtain Co., Inc.	\$17,357.65
Lewis Saltiel	Lenar Fabrics	1,760.00
Liliane Saltiel	Dick Bailey Service, Inc.	8,061.10

Each statement was stamped with an arrow pointing to the wage figure with the legend "Included in Schedule C".

4. On March 26, 1982, the Audit Division issued a Statement of Audit Changes to petitioners for the year 1978 which contained the following explanation and computation:

"Expenses claimed on your 1978 personal income tax return are not ordinary and necessary in the production of income as an employee.

According to the information submitted, your 1978 tax liability has been recomputed as follows:

Wages	\$17,358.00
	8,061.00
	1,760.00
	1,820.00
	94.00
Total wages	<u>\$29,093.00</u>
Interest	855.00
Total income	<u>\$29,948.00</u>
Less: Itemized deductions	6,794.00
Balance	<u>\$23,154.00</u>
Exemptions	3,900.00
New York taxable income	<u>\$19,254.00"</u>

5. Based on the aforementioned Statement of Audit Changes, the Audit Division, on April 14, 1982, issued a Notice of Deficiency to petitioners for 1978, asserting additional New York State and City tax due of \$1,752.54, plus interest of \$505.58, for a total asserted due of \$2,258.12.

6. Petitioners also filed a New York State and City income tax resident return for 1979 wherein they elected a filing status of "Married filing separately on one return". On his portion of said return, Mr. Saltiel reported business income of \$13,927.00, while on her portion of the return, Mrs. Saltiel reported business income of \$5,741.00. The following table details the manner in which petitioners computed their respective business incomes:

LEWIS SALTIEL

<u>Income</u>		
Ames Shower Curtain Co., Inc.	\$24,500.00	
JPL Textiles	<u>3,029.00</u>	\$27,529.00
<u>Expenses</u>		
Payments to Liliane Saltiel (Secretary)	\$ 3,000.00	
Telephone: Inside \$25 x 12 mos.	300.00	
Outside	628.00	
Travel (12,540 x 18½¢)	2,319.00	
Meeting, Promotion, Prospecting	3,463.00	
Office Supplies & Stationery & Packaging	381.00	
Accounting	100.00	
Postage	108.00	
Cabs, Fares	54.00	
Warehousing	300.00	
Samples & Fabric	2,459.00	
Freight	83.00	
Newspapers & Magazines	393.00	
Bank Charges	<u>14.00</u>	
		<u>13,602.00</u>
<u>Net Income</u>		\$13,927.00

LILIANE SALTIEL

<u>Income</u>		
Typing Services	\$ 8,260.00	
JPL Textiles	<u>3,000.00</u>	\$11,260.00

<u>Expenses</u>		
Paper & Supplies	439.00	
Pick-up & Delivery Expense (11,920 mi @ 18½¢)	2,206.00	
Outside Services	518.00	
Repairs, Maint.	293.00	
Office Maint.	1,200.00	
Hospitality	863.00	
		<u>5,519.00</u>
<u>Net Income</u>		\$ 5,714.00

7. Attached to petitioners' 1979 return were wage and tax statements as follows:

<u>Employee</u>	<u>Employer</u>	<u>Wages</u>
Lewis Saltiel	Ames Shower Curtain Co., Inc.	\$24,499.84
Liliane Saltiel	Dick Bailey Service, Inc.	8,259.76

Each statement was stamped with an arrow pointing to the wage figure with the legend "Included in Schedule C".

8. On February 8, 1983, the Audit Division issued a Statement of Audit Changes to petitioners for 1979 which contained the following explanation and computation:

"As salaried employees, you are not a business entity and therefore are not entitled to claim Schedule C Deductions as those expenses are not ordinary and necessary for the production of income as employees.

As adjustment increases total income to over \$25,000.00, no household credit is allowed.

	<u>HUSBAND</u>	<u>WIFE</u>
Taxable Incomes Reported	\$ 4,516.00	\$ 4,516.00
Add: Disallowed Expenses	13,602.00	5,519.00
Taxable Income Corrected	<u>\$18,118.00</u>	<u>\$10,035.00"</u>

9. Based on the aforementioned Statement of Audit Changes, the Audit Division, on April 8, 1983, issued two notices of deficiency to petitioners asserting additional New York State and City tax due for 1979 as follows:

<u>Name</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
Lewis and Liliane Saltiel	\$1,415.44	\$470.49	\$1,885.93
Liliane Saltiel	480.89	159.85	640.74

10. The Notice of Deficiency issued to Lewis and Liliane Saltiel was improper since petitioners filed separately for 1979. This notice should properly have been issued to Mr. Saltiel alone.

11. JPL Textiles, listed above in Finding of Fact "2" as a source of income for Mr. Saltiel and in Finding of Fact "6" as a source of income for both Mr. and Mrs. Saltiel, was a sole proprietorship owned and operated by Mr. Saltiel from his home. JPL Textiles was engaged in the business of textile distribution. The \$3,000.00 included as part of Mrs. Saltiel's income from JPL Textiles for 1979 was purportedly for secretarial services.

12. Petitioners' tax returns were selected for examination along with those of approximately 100 other individuals on the basis that the returns had been prepared by a particular accountant. An investigation had disclosed that said accountant had consistently prepared returns on which an individual with wage or salary income shown on wage and tax statements had reported said income as business receipts on Federal Schedule C. Department of Taxation and Finance auditors were directed to review the returns and to disallow claimed business expense deductions if the taxpayer appeared to be an employee receiving wage or salary income reported on wage and tax statements. Petitioners' claimed Schedule C deductions were disallowed on that basis.

13. Petitioners contend:

(a) that the notices of deficiency were issued on an arbitrary and capricious basis just prior to the expiration of the period of limitations on assessment, thus depriving petitioners of the opportunity to present substantiation for the claimed deductions;

(b) that petitioners are part of a large group of taxpayers who were selected for special scrutiny because their returns had been prepared by the same tax preparer; and

(c) that where petitioners do not have cancelled checks or other receipts for certain expenses, the Department of Taxation and Finance should allow petitioners a reasonable estimate of such expenses.

14. Petitioners submitted documentary evidence in the form of affidavits, sales invoices, cancelled checks and worksheets in substantiation of a portion of the business income claimed on their respective Federal Schedules C for the years at issue.

CONCLUSIONS OF LAW

A. That the notices of deficiency were properly issued and were not arbitrary and capricious. The returns were patently erroneous and the Audit Division was justified in disallowing certain of the business expenses claimed by petitioners on their respective Federal Schedules C. The notices of deficiency were preceded by statements of audit changes and petitioners had an opportunity to file amended returns claiming employee business expenses as adjustments to income on Federal Form 2106, or as itemized deductions, but did not do so.

B. That the fact that petitioners' returns were selected for examination because of certain practices of their accountant is irrelevant. Petitioners' liability depends solely on the facts adduced herein.

C. That petitioner Liliane Saltiel has failed to sustain her burden of proof (Tax Law § 689[e]; Administrative Code § T46-189.0[e]) to show (i) that she was engaged in a trade or business other than as an employee (Internal Revenue Code § 62[1]); (ii) that the expenses in question were trade or business deductions of an employee deductible pursuant to Internal Revenue Code § 62(2);

and (iii) that the expenses in question were ordinary and necessary business expenses deductible under Internal Revenue Code § 162(a).

D. That petitioner Lewis Saltiel has sustained his burden of proof to show that he was engaged in a trade or business during the years at issue (see Finding of Fact "11"). The evidence submitted establishes that the following expenses were ordinary and necessary business deductions for these years:

<u>Expenses</u>	<u>1978</u>	<u>Amount</u>
Office Supplies & Stationery & Packaging		\$ 221.00
Accounting		100.00
Postage, Freight		110.00
Warehousing		129.00
Samples - Fabric		4,047.00
Freight		136.00
Swatches		403.00
		<u>\$5,146.00</u>

<u>Expenses</u>	<u>1979</u>	<u>Amount</u>
Office Supplies & Stationery & Packaging		\$ 381.00
Accounting		100.00
Postage		108.00
Warehousing		300.00
Samples & Fabric		2,459.00
Freight		83.00
		<u>\$3,431.00</u>

With respect to the remaining expenses claimed by Mr. Saltiel, this petitioner has failed to establish that such expenses were ordinary and necessary business expenses deductible under Internal Revenue Code § 162(a).

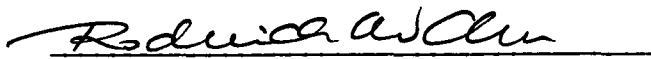
E. That the petitions of Lewis Saltiel and Liliane Saltiel are granted to the extent indicated in Conclusion of Law "D" herein; that the Audit Division is directed to recompute the Notice of Deficiency dated April 14, 1982 and the Notice of Deficiency dated April 8, 1983 issued to Lewis and Liliane Saltiel in accordance therewith and in accordance with Finding of Fact "10"; and that

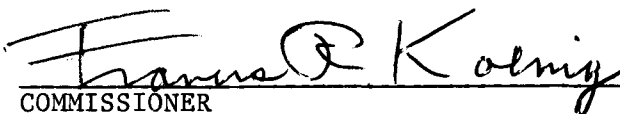
except as so granted, the three notices of deficiency, dated April 14, 1982 and April 8, 1983, are in all other respects sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 29 1987


PRESIDENT


COMMISSIONER


COMMISSIONER