

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Oded & Muriel Stitt : 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 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 Oded & Muriel Stitt the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

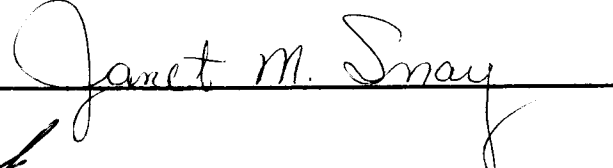
Oded & Muriel Stitt
RFD 1 - Sabbath Day Hill Road
South Salem, NY 10590

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

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of
Oded & Muriel Stitt :

AFFIDAVIT OF MAILING

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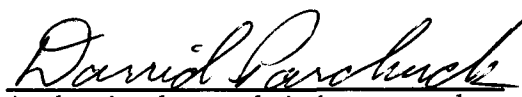
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 29th day of May, 1987, he served the within notice of decision by certified mail upon Louis F. Brush, the representative of the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

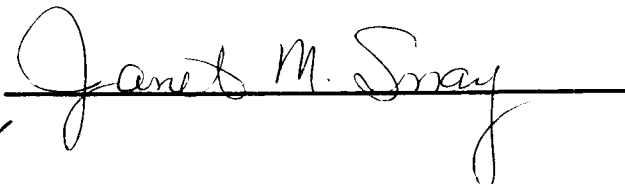
Louis F. Brush
101 Front Street
Mineola, NY 11501

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

Oded & Muriel Stitt
RFD 1 - Sabbath Day Hill Road
South Salem, NY 10590

Dear Mr. & Mrs. Stitt:

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 Petition	:	
of	:	
ODED STITT AND MURIEL STITT	:	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	:	
City Nonresident Earnings Tax under Chapter	:	
46, Title U of the Administrative Code of the	:	
City of New York for the Years 1978 and 1979.	:	

Petitioners, Oded Stitt and Muriel Stitt, RFD 1 - Sabbath Day Hill Road, South Salem, New York 10590, 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 earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the years 1978 and 1979 (File Nos. 37573 and 43137).

On October 23, 1985, petitioners, by their duly authorized representative, Louis F. Brush, Esq., waived a hearing and submitted their case for decision based upon the entire record contained in the file, together with documents to be submitted by October 8, 1986. After due consideration, the State Tax Commission 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 petitioners have substantiated that one or both of them was engaged in a trade or business during the year at issue.

III. Whether petitioners have substantiated the character and amount of business expenses claimed as deductions from gross income for the years at issue.

FINDINGS OF FACT

1. Petitioners, Oded and Muriel Stitt, filed New York State income tax resident returns (and City of New York nonresident earnings tax returns) for 1978 and 1979. For each year, petitioners' filing status was "Married filing separately on one return".

(a)(i) On the 1978 return, petitioner Oded Stitt did not list or specify his occupation, and reported \$20,057.00 in business income. His Federal Schedule C, Form 1040, showed the following income and expenses:

Schedule C - Income From Business or Profession - Engineer

Consultation Income	\$33,977	
Interest Income	21	
Teaching Income	-	\$33,998

Expenses:

Books, Reference Materials	403	
Newspapers, Magazines, Etc.	391	
Meeting Expenses Re: Shipping Claims	943	
Drafting & Office Supplies	836	
Secretarial (Payments to M. Stitt \$150 x 52 wks.)	7,800*	
Cassettes, Shelves, for Note-Taking	408	
Accounting	200	
Travel to Kansas & Nevada	193	
Materials Handling Research	654	
Documentation - Complaints Answering	911	
Aviation Engineering Research	597	
Travel Exp.	605	
		<u>13,941</u>

Net Income	<u>\$20,057</u>
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* Included as "Other Income" on Form 1040, Page 1, Line 30

(ii) A Wage and Tax Statement issued to petitioner Oded Stitt by Standard Mtr. Prod., Inc., which was attached to the return, showed "Wages,

tips, other compensation" of \$33,977.00. A stamped arrow with the legend "Included in Schedule C" pointed to this amount.

(iii) A 1978 unincorporated business tax return filed by Oded Stitt reported \$20,057.00 in net profit, with a "subtraction" of \$33,977.00, thus resulting in a total (and net) loss from business in the amount of \$13,920.00 (which amount is \$21.00 short of equalling the amount of alleged business expenses per Schedule C).

(iv) Petitioners itemized their deductions for 1978, but claimed no miscellaneous deductions as part thereof.

(b)(i) On the 1979 return, petitioner Oded Stitt stated his occupation to be "Engineer", and reported \$18,581.00 in business income. His Federal Schedule C showed the following income and expenses:

Schedule C -Income From Business or Profession - Engineer

Consultation Income	\$37,423	
Interest Income	-	
Teaching Income	-	\$37,423

Expenses:

Secretarial (Payments to M. Stitt \$150 x 52 Wks)	7,800*	
Books, Reference Materials	492	
Newspapers, Magazines, Etc.	431	
Meeting Expenses Re: Promotions, Shipping Claims	2,447	
Drafting & Office Supplies	923	
Cassettes, Shelves for Note-Taking	449	
Accounting	250	
Travel to Kansas & Nevada	296	
Materials Handling Research	793	
Documentation - Complaints Answering	1,012	
Aviation Engineering Research	698	
Travel - Automobile 11,900 mi @ 18½¢ =	2,202	
Parking & Tolls	527	2,729
Hospitality		522

Net Income	<u>18,842</u>
	<u>\$18,581</u>

* Reported as "Other Income" Form 1040, Pg. 1, Line 21

(ii) A Wage and Tax Statement issued to petitioner Oded Stitt by Standard Mtr. Prod., Inc., which was attached to the return, showed "Wages, tips, other compensation" of \$37,423.24. A stamped arrow with the legend "Included in Schedule C" pointed to said amount.

(iii) A 1979 unincorporated business tax return filed by Oded Stitt reported \$18,581.00 in net profit, with a "subtraction" of \$37,423.00, thus resulting in a total (and net) loss from business in the amount of \$18,842.00 (which amount equalled the amount of alleged business expenses per Schedule C).

(iv) Petitioners itemized their deductions for 1979, but claimed no miscellaneous deductions as part thereof.

2. Petitioners' tax returns were selected for examination along with those of approximately 100 other individuals on the basis that said 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. Petitioner Oded Stitt's claimed Schedule C deductions were disallowed on that basis.¹

3. (a) On March 24, 1982, the Audit Division issued a Statement of Audit Changes to petitioners for 1978 on which additional New York State and City tax

1 For each year, part of the alleged Schedule C business expenses included \$7,800.00 claimed by Oded Stitt as a secretarial expense based on monies allegedly paid to Muriel Stitt. By its disallowance, the Audit Division effectively increased Oded Stitt's reported income by such amount for each year. In turn, the Audit Division eliminated such amount from Muriel Stitt's reported income for each year.

due was computed at \$781.08, based on disallowance of the claimed Schedule C business expenses for 1978. On April 14, 1982, the Audit Division issued a Notice of Deficiency to petitioners for \$781.08 in additional tax due for 1978, plus interest.

(b) On February 8, 1983, the Audit Division issued a Statement of Audit Changes to petitioners for 1979 on which additional New York State and City tax due was computed at \$1,492.12, again based on disallowance of claimed Schedule C business expenses. On April 8, 1983, the Audit Division issued a Notice of Deficiency to petitioners in the amount of \$1,492.62 in additional tax due for 1979, plus interest.

4. During the years at issue, petitioner Oded Stitt was employed by Standard Motor Products, Inc., as its Manager of Distribution Operations. He is a graduate of New York University with bachelor's degrees in arts and in engineering and a master's degree in engineering.

5. Petitioners submitted certain diaries, handwritten lists, photostatic copies of book covers listed as purchased, some cancelled credit card receipts and other receipts pertaining to the claimed business expenses for each of the years in question. The monies allegedly paid to Mrs. Stitt were not evidenced by cancelled checks. Her work duties were listed as typing, translation and phone answering. The newspapers claimed as business expenses involved daily purchases of the New York Times and Wall Street Journal. A large portion of the automobile travel expense was claimed based upon use of Oded Stitt's automobile in bringing home work materials too voluminous to fit in a briefcase and returning the same to his work location.

6. There is no evidence that Mr. Stitt's earnings were derived other than from his employment with Standard Motor Products, Inc. Part of petitioners' submission included a letter from Oded Stitt's employer, providing as follows:

"[t]his will confirm that Mr. Oded Stitt, our Manager of Distribution Operations, incurs certain expenses during the course of his employment that, in accordance with corporate policy, are not reimbursed by the corporation. These expenses are necessary to maintain good customer relations with local area clients and are incurred both on and off our premises. In accordance with this policy these expenses are paid to Mr. Stitt as part of his annual compensation."

7. Petitioners maintain:

(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; and

(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.

CONCLUSIONS OF LAW

A. That the notices of deficiency were properly issued and were not arbitrary or capricious. The returns were patently erroneous and the Audit Division was justified in disallowing the Schedule C business income and expenses. Each Notice of Deficiency was preceded by a Statement of Audit Changes and petitioners had an opportunity to file amended returns claiming employee business expenses as adjustments on Federal Form 2106, or as itemized miscellaneous 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 petitioners have not sustained their burden of proof under section 689(e) of the Tax Law and Administrative Code § U46-39.0(e) to show that petitioner Oded Stitt was engaged in a trade or business other than as an employee, and thus have not proven entitlement to deduct "business expenses" as reflected per his Schedule C.


D. That while it is possible that petitioner Oded Stitt may have been entitled to deduct certain of the claimed expenses either as employee business expenses (if unreimbursed) under sections 62(2) or 63(f) of the Internal Revenue Code if he had filed Form 2106, or as miscellaneous itemized deductions, petitioners have nevertheless failed, based on the evidence submitted, to prove entitlement to any of the items or amounts shown.

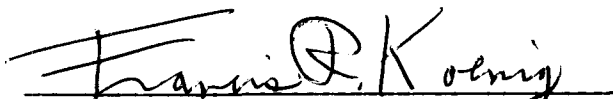
E. That the petitions of Oded and Muriel Stitt are denied and the notices of deficiency issued on April 14, 1982 and April 8, 1983 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 29 1987


PRESIDENT


COMMISSIONER


COMMISSIONER