

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Anna M. Raftery : 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 Personal Income Tax under Chapter 46, :  
Title T of the Administrative Code of the City :  
of New York for the Years 1978 and 1979. :  
:

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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 18th day of June, 1987, he/she served the within notice of Decision by certified mail upon Anna M. Raftery the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

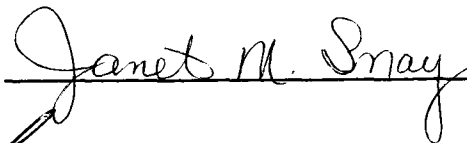
Anna M. Raftery  
139-30 Pershing Crescent  
Briarwood, NY 11435

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  
18th day of June, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
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STATE OF NEW YORK

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for Redetermination of a Deficiency or for :  
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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 18th day of June, 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:

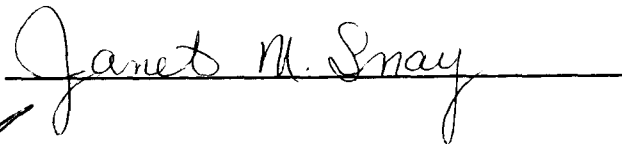
Louis F. Brush  
101 Front St.  
Mineola, NY 11501

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  
18th day of June, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

June 18, 1987

Anna M. Raftery  
139-30 Pershing Crescent  
Briarwood, NY 11435

Dear Ms. Raftery:

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  
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 St.  
Mineola, NY 11501

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ANNA M. RAFTERY	:	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 Personal Income Tax under Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the Years 1978 and 1979.	:	

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Petitioner, Anna M. Raftery, 139 30 Pershing Crescent, Briarwood, New York 11435, 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 Chapter 46, Title T of the Administrative Code of the City of New York for the years 1978 and 1979 (File Nos. 37568 and 44089).

On October 23, 1985, petitioner waived a hearing before the State Tax Commission and submitted the matter for decision based upon the Audit Division file, as well as a brief and additional documents 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 she was engaged in a trade or business during the years at issue.

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

FINDINGS OF FACT

1. Anna M. Raftery (hereinafter "petitioner") filed a New York State Income Tax Resident Return (with City of New York personal income tax) for each of the years 1978 and 1979. On each return, petitioner reported her occupation as "Court Reporting SVC".

2. For 1978, petitioner reported business income of \$16,228.00. A Federal Schedule C attached to the return reported the following income and deductions:

"Schedule C - Income From Business or Profession: Court Reporting

Income: Brooklyn Supreme Court	\$22,128.00	
Transcripts	2,717.00	
Misc. - Insurance Companies	<u>3,445.00</u>	\$28,290.00

Expenses -

A-Mart Expenses	1,121.00
Typing Fees Paid	2,540.00

Professional Development

Tapeworm Cassettes, Verbatim	574.00
Travel to Schools (2,250 mi @ 17¢)	383.00
Accounting	100.00
Interest - Educational Loan & Auto Maint.	94.00
Dues, Memberships	170.00
Paper, supplies, Machine Repairs	727.00
Telephone - inside	240.00
Postage	472.00
Photocopies	684.00
Telephone - outside	382.00
Tolls, Parking	493.00
Travel (8,500 mi @ 17¢)	1,445.00
Career Insurance	101.00
Newspapers, Magazines, Etc.	378.00
Cassettes, Tapes	286.00
Hospitality	544.00
Promotional Expenses	892.00
Studio Maint.	600.00

Bank Charges	<u>36.00</u>	<u>12,062.00</u> <sup>1</sup>
Net Income		<u>\$16,228.00"</u>

3. For 1979, petitioner reported business income of \$19,374.00. A Federal Schedule C attached to the return reported the following income and deductions:

"Schedule C - Income From Business or Profession: Court Reporting Svce

Income:

Brooklyn Supreme Court	\$23,900	
Transcripts	1,685	
Misc.	<u>9,776</u>	35,361

Expenses:

A-Mart Expenses	1,309	
Typing Fees Paid	2,589	
Professional Development:		
Tapeworm Cassettes Verbatim [sic]	625	
Travel to Schools (2,250 mi. @ 18¢)	405	
Accounting	100	
Interest - Educational Loan & Auto Maint.	706	
Dues, Memberships	170	
Paper, Supplies, Machine Repairs	1,075	
Telephone - Inside	329	
Postage	473	
Photocopies	684	
Telephone - Outside	382	
Tolls, Parking	893	
Travel (8,500 @ 18¢)	1,530	
Career Insurance	165	
Newspaper, Magazines, Etc.	378	
Cassettes, Tapes	586	
Hospitality	544	
Promotional Expenses	892	
Studio Maint	600	
Bank Charges	46	
Supplies	<u>1,506</u>	15,987

NET INCOME	<u>19,374"</u>
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<sup>1</sup> The total of the deductions claimed for 1978 is \$12,262.00 not \$12,062.00 as reported.

4. Attached to each of petitioner's returns for the years at issue was a Wage and Tax Statement issued to petitioner by the State of New York showing \$22,128.28 for 1978 and \$33,675.62 for 1979 in "Wages, tips, other compensation". The legend "Included in Schedule C", with an arrow pointing to said figure, was stamped on each statement.

5. Petitioner filed an unincorporated business tax return for each of the years 1978 and 1979. For 1978, she reported a net profit of \$16,228.00 and a subtraction of \$22,128.00, which yielded a net loss and accordingly, no tax liability. For 1979, she reported a net profit of \$19,374.00 and a subtraction of \$33,676.00, which yielded a net loss and, accordingly, no tax liability. The subtractions claimed of \$22,128.00 and \$33,676.00 for the years 1978 and 1979, respectively, were the amounts of income reported on the aforesaid wage and tax statements. A stamped legend "FICA Wages included in Schedule C", with an arrow pointing to the subtraction, appears on petitioner's 1978 and 1979 unincorporated business tax returns.

6. On petitioner's 1978 personal income tax return she claimed the standard deduction. On her 1979 return she claimed itemized deductions, however, no miscellaneous deductions were claimed for 1979. No adjustments to income were claimed for either year at issue.

7. Petitioner's 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 a 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's claimed Schedule C deductions were disallowed on that basis.

8. On March 24, 1982, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1978, whereon her claimed business expense deductions reported on her Schedule C were disallowed in full based on the explanation that:

"Expenses claimed are not ordinary and necessary in the production of income as an employee."

9. Based on the aforesaid statement, a Notice of Deficiency was issued against the petitioner for the year 1978 on April 14, 1982, asserting additional New York State and City personal income taxes of \$1,742.45, plus interest of \$502.66, for a total due of \$2,245.11.

10. On January 17, 1983, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1979, whereon, as was the case in 1978, the Federal Schedule C deductions were disallowed on the basis that the expenses were not ordinary and necessary for the production of income as an employee. Petitioner's 1979 total New York Income was recomputed on said schedule as follows:

"Wages	\$33,675.62
Interest Income	1,210.00
Dividends	353.00
Capital Gain	7,643.00
Other Income	<u>11,461.00</u>
Total New York Income	\$54,342.00"

11. Based on the aforesaid statement, a Notice of Deficiency was issued against petitioner for the year 1979 on March 9, 1983, asserting additional New



York State and City personal income taxes of \$4,319.30, plus interest of \$1,410.90, for a total due of \$5,730.20<sup>2</sup>.

12. Petitioner contends:

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

(b) that petitioner is 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 petitioner does not have cancelled checks or other receipts for certain expenses, the Department of Taxation and Finance should allow petitioner a reasonable estimate of such expenses.

13. Documentation submitted with respect to petitioner's income for the year 1978 shows that she earned more income (other than wages) than the amount reported on her Federal Schedule C. On petitioner's 1978 Schedule C she reported income, other than that reported on her Wage and Tax Statement, of \$6,162.00. Review of her records submitted shows that she earned income properly includable on her Schedule C of \$6,996.96. Petitioner submitted documentation with respect to 1978 business deductions which substantiates that she is properly entitled to Schedule C deductions of \$2,130.30. Accordingly, for 1978, her net business income is \$4,866.66 (\$6,996.96 - \$2,130.30).

14. With respect to the year 1979, petitioner failed to submit documentation to show that her income for said year was properly reported. Although her wage income, according to her Wage and Tax Statement, was \$33,675.62, petitioner

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2 The Notice of Deficiency contains typographical errors wherein the interest due was inadvertently typed into the 'Total Penalty' box and the balance due was inadvertently typed in the "Interest" box.

reported only \$23,900.00 on her Federal Schedule C as being derived from her employer. Documentation submitted with respect to petitioner's claimed Schedule C deductions show that she is properly entitled to claim such deductions to the extent of \$1,992.26.

15. The claimed Schedule C deductions which were not allowed in 1978 and 1979 were unsubstantiated with respect to amounts and/or character of such expenses.

#### 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. The notices of deficiency for 1978 and 1979 were each preceded by a Statement of Audit Changes; thus, if a portion of the expenses claimed on Schedule C were actually employee business expenses properly deductible as adjustments on Federal Form 2106, or as itemized miscellaneous deductions, petitioner had an opportunity to file amended returns, but she did not do so.

B. That even if petitioner may have been entitled to deduct certain employee business expenses under sections 62(2) or 63(f) of the Internal Revenue Code if she had filed Form 2106, or had claimed such expenses as miscellaneous deductions, petitioner nevertheless failed to sustain her burden of proof under section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York to show the character or, in many cases, the amount of the majority of her claimed business expenses.

C. That the fact that petitioner's returns were selected for examination because of certain practices of her accountant is irrelevant. Petitioner's liability depends solely on the facts adduced herein.

D. That a portion of petitioner's claimed income and deductions were derived from a business or trade carried on by her during the years at issue. Accordingly, such income and deductions are properly reportable on a Federal Schedule C as business income and deductions.

E. That petitioner's adjusted 1978 Total New York Income is \$26,494.94, computed as follows:

<u>Income Item</u>	<u>Amount</u>
Wage Income	\$22,128.28
Business Income (See Finding of Fact "13", <u>supra</u> )	4,866.66
Interest Income	1,061.00
Sale or exchange of capital assets	<u>(1,561.00)</u>
Adjusted 1978 Total New York Income	<u>\$26,494.94</u>

F. That petitioner's adjusted 1979 Total New York Income is \$52,350.36, computed as follows:


<u>Income Item</u>	<u>Amount</u>
Wages	\$33,675.62
Business Income (\$11,461.00 - \$1,992.26)	9,468.74
Interest Income	1,210.00
Dividend Income	353.00
Capital Gain	<u>7,643.00</u>
Adjusted 1979 Total New York Income	<u>\$52,350.36</u>

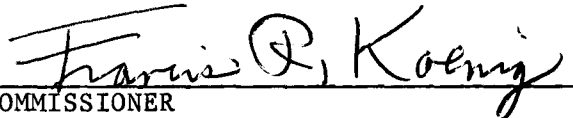
G. That the petition of Anna M. Raftery is granted to the extent provided in Conclusions of Law "D", "E" and "F", supra; that the Audit Division is directed to modify the notices of deficiency issued April 14, 1982 and March 9, 1983 accordingly; and that, except as so granted, said petition is in all other respects denied.

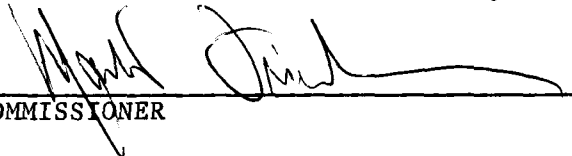
DATED: Albany, New York

STATE TAX COMMISSION

JUN 18 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER