

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Joseph & Arlene Raiola : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or for :  
Refund of New York State and New York City :  
Personal Income Tax under Article 22 of the Tax :  
Law and the Administrative Code of the City of :  
New York for the Years 1978 & 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 13th day of March, 1987, he/she served the within notice of Decision by certified mail upon Joseph & Arlene Raiola the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

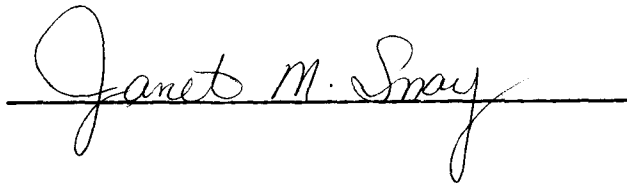
Joseph & Arlene Raiola  
1639 Ryder St.  
Brooklyn, NY 11234

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  
13th day of March, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
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STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
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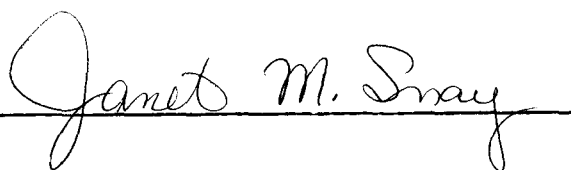
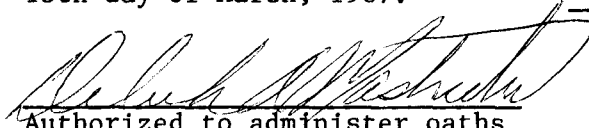
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of March, 1987, he served the within notice of Decision by certified mail upon Louis F. Brush, the representative of the petitioners 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  
13th day of March, 1987.

  
  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

March 13, 1987

Joseph & Arlene Raiola  
1639 Ryder St.  
Brooklyn, NY 11234

Dear Mr. & Mrs. Raiola:

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 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

JOSEPH AND ARLENE RAIOLA

DECISION

for Redetermination of a Deficiency or for  
Refund of New York State and New York City  
Personal Income Tax under Article 22 of the Tax  
Law and the Administrative Code of the City of  
New York for the Years 1978 and 1979.

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Petitioners, Joseph and Arlene Raiola, 1639 Ryder Street, Brooklyn, New York 11234, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the years 1978 and 1979 (File Nos. 37761 and 44349).

On October 23, 1985, petitioners waived a hearing before the State Tax Commission and agreed to submit the matter for a decision based on 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 Joseph Raiola has substantiated that he was engaged in a trade or business during the years 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, Joseph and Arlene Raiola, filed New York State Income Tax Resident returns with City of New York Personal Income Tax for 1978 and 1979. For each year, the filing status was "Married, filing separately on one return".

(a)(i) On his 1978 return, petitioner Joseph Raiola stated his occupation to be "Language Consultant" and reported \$14,643.00 in business income. His Federal Schedule C, Form 1040, showed the following income and expenses:

"SCHEDULE C INCOME FROM BUSINESS OR PROFESSION - LANGUAGE CONSULTANT"

Revenues - Institutional	18,650	
- Other	275	
- Adult Community Service	<u>3,761</u>	22,686
Expenses:		
Payments to Arlene Raiola (secretarial)	5,200*	
Telephone	180	
Travel (4,000 @ 17¢)	680	
Dues	168	
Subscriptions	107	
Books, Magazines, Newspapers	306	
Professional Literature	104	
Records, Cassettes, Tapes for Teaching	109	
Briefcase & Supplies	82	
Hospitality at Home - Tutoring	283	
Meeting Expense	348	
Attendance Major Drama/Literary Events	<u>476</u>	
		<u>8,043</u>
	Net Income	<u><u>14,643</u></u>

\* Reported as "Other Income" Form 1040, P. 1, Line 20"

The Schedule C showed Mr. Raiola's main business activity to be "Language Consultant".

A Wage and Tax Statement issued to petitioner Joseph Raiola by the City of New York Board of Education, which was attached to the return, showed "Wages and other compensation" of \$22,411.14. A stamped arrow with the legend "Included in Schedule C" pointed to total FICA wages of \$17,700.00.

(ii) On her 1978 return, petitioner Arlene Raiola reported \$5,200.00 in "Other income". She stated her occupation to be "Office Aide".

(iii) Petitioners itemized their deductions but claimed no miscellaneous deductions.

(b)(i) On his 1979 return, petitioner Joseph Raiola again stated his occupation to be "Language Consultant" and reported \$15,296.00 in business income. His Federal Schedule C showed the following income and expenses:

"SCHEDULE C-INCOME FROM BUSINESS OR PROFESSION - LANGUAGE CONSULTANT"

Revenues - Institutional	\$21,305	
- Other	325	
- Adult Community Service	<u>3,983</u>	\$25,613

Expenses:

Payments to Arlene Raiola (secretarial)	5,200*	
Telephone (\$25 x 12 mos.)	300	
Travel (4,260 mi. @ 18½¢)	788	
Dues	196	
Subscriptions	126	
Books, Magazines, Newspapers, Mailings	438	
Professional Literature	233	
Records, Cassettes, Tapes for Teaching	621	
Briefcase & Supplies	207	
Hospitality	847	
Meeting Expense	522	
Attendance Major Drama/Literary Events	546	
Foreign Language Films	<u>293</u>	
		<u>10,317</u>
Net Income		<u>\$15,296</u>

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

The main business activity was once again shown as "Language Consultant" on the Schedule C.

A Wage and Tax Statement issued to petitioner Joseph Raiola by the City of New York Board of Education, which was attached to the return, showed "Wages, Tips, Other Compensation" of \$25,287.70. A stamped arrow, with the legend "Included in Schedule C" pointed to said amount.

A 1979 unincorporated business tax return filed by Joseph Raiola reported \$15,296.00 in net profit with subtractions of \$25,288.00. A stamped arrow and legend "FICA Wages Included in Schedule C" pointed to the latter figure. The return reported a net loss of \$9,992.00 with no tax due.

(ii) Petitioner Arlene Raiola again stated her occupation to be "Office Aide" and reported \$5,200.00 in "other income".

(iii) Petitioners itemized their deductions but claimed no miscellaneous deductions.

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 Joseph Raiola's claimed Schedule C deductions were disallowed on that basis.

3.(a) On March 24, 1982, the Audit Division issued a Statement of Audit Changes to petitioners for 1978 with the following explanation:

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

Since wife's income is now reduced to zero we have recomputed your tax on a joint return basis."

Additional New York State personal income tax due was computed at \$302.30 and additional New York City personal income tax due at \$92.57 for a total of

\$394.87. On April 14, 1982, the Audit Division issued a Notice of Deficiency to petitioners for \$394.87 in additional tax for 1978 and interest.

(b) On February 4, 1983, the Audit Division issued a Statement of Audit Changes to petitioners for 1979 with the following explanation:

"As a salaried employee, you are not a business entity and therefore are not entitled to claim Schedule C deductions as these expenses are not ordinary and necessary for the production of income as an employee.

Medical expenses adjusted to reflect increased income.

Since the household gross income is \$25,000.00 or more, the household credit is not allowed."

Additional New York State tax due was \$573.18 with additional New York City tax due of \$169.00, for a total due of \$742.18. On April 8, 1983, the Audit Division issued a Notice of Deficiency to petitioners in the amount of \$742.18 in additional tax due for 1979, plus interest.

4. During the years at issue, petitioner Joseph Raiola was a teacher for the Board of Education of the City of New York. He also worked part time for the Board of Education Auxiliary Services for High Schools, where he taught English as a second language and reading. The income shown on the wage and tax statements is the total of Mr. Raiola's full-time and part-time teaching positions. Mr. Raiola also earned \$275.00 in 1978 and \$325.00 in 1979 from private tutoring.

5. Petitioners submitted certain diaries, cancelled checks, photocopies of magazine covers and book jackets and other documents which are insufficient to establish that petitioner Joseph Raiola was anything but a teacher for the years at issue.

6. 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.

#### 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 with the exception of a small amount of income from private tutoring, petitioners have not sustained their burden of proof under section 689(e) of the Tax Law to show that petitioner Joseph Raiola was engaged in a trade or business other than as an employee. While the \$275.00 earned in 1978 and the \$325.00 earned in 1979 for private tutoring may properly have been

reportable on Schedule C, expenses attributable thereto were not substantiated. Thus, expenses claimed on Schedule C may not be deducted under section 62(1) of the Internal Revenue Code.

D. That while it would appear that petitioner Joseph Raiola may have been entitled to deduct certain employee business expenses under sections 62(2) or 63(f) of the Internal Revenue Code if he had filed Form 2106, or had claimed such expenses as miscellaneous deductions, petitioners nevertheless failed to sustain their burden of proof under section 689(e) of the Tax Law to show the character or, in many cases, the amount of the claimed business expenses.

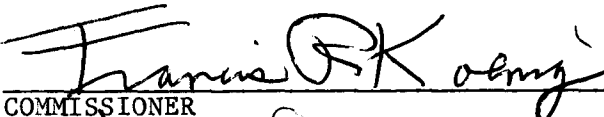
E. That the petition Joseph and Arlene Raiola is denied and the notices of deficiency issued on April 14, 1982 and April 8, 1983 are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER