

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John Rucker : 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 Year 1979.

State of New York :
ss.:
County of Albany :

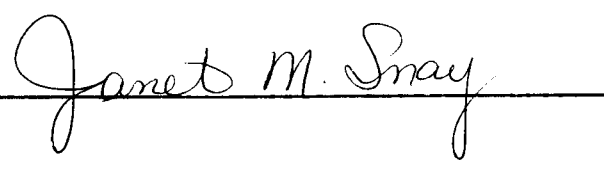
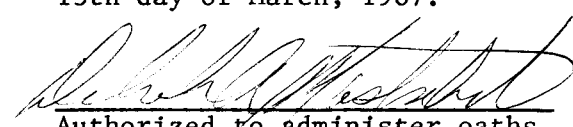
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of March, 1987, he/she served the within notice of Decision by certified mail upon John Rucker the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John Rucker
154 30-28 Ave.
Flushing, NY 11354

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John Rucker : 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 Year 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 13th day of March, 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:

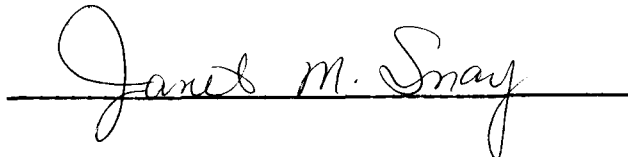
Louis F. Brush
101 Front St.
Mineola, NY 11501

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
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

John Rucker
154 30-28 Ave.
Flushing, NY 11354

Dear Mr. Rucker:

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

In the Matter of the Petition

of

JOHN RUCKER

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 Year 1979.

DECISION

Petitioner, John Rucker, 154 30-28 Avenue, Flushing, New York 11354, 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 year 1979 (File No. 43265).

On October 23, 1985, petitioner waived his right to a formal hearing and requested the State Tax Commission to render a decision based on the entire record contained in his file, with all briefs to be submitted by October 8, 1986. After due consideration, the State Tax Commission hereby renders the following decision.

ISSUES

I. Whether the Notice of Deficiency was 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. Petitioner, John Rucker, together with his wife, Elizabeth Rucker, timely 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, petitioner reported business income of \$20,436.00, while on her portion of the return Mrs. Rucker reported business income totalling \$3,133.00. The following table details the manner in which petitioner and his spouse computed their respective business incomes:

<u>John Rucker</u>			
<u>Income</u>			
Income from commissions, etc.	\$27,786.00		
Consulting, planning	<u>550.00</u>		
Total income			\$28,336.00
<u>Expenses</u>			
Payments to Elizabeth Rucker - secretarial	\$ 4,800.00		
Magazines, newspapers	392.00		
Car fares	296.00		
Outside telephone	433.00		
Meeting, solicitation expense	741.00		
Calculator, supplies	107.00		
Hospitality	599.00		
Mailings	389.00		
Postage	<u>143.00</u>		
Total expenses			<u>7,900.00</u>
<u>Net income</u>			<u>\$20,436.00</u>
<u>Elizabeth Rucker</u>			
<u>Income</u>			
Service fees received			\$ 4,800.00
<u>Expenses</u>			
Travel	\$ 1,372.00		
Tolls	17.00		
Parking	84.00		
Supplies	<u>194.00</u>		
Total expenses			<u>1,667.00</u>
<u>Net Income</u>			<u>\$ 3,133.00</u>

2. Attached to petitioner's return was a wage and tax statement issued to Mr. Rucker by Pfizer, Inc., reporting wages, tips, other compensation of \$27,785.79. The statement is stamped with an arrow pointing to the \$27,785.79 figure with the legend "Included in Schedule C".

3. On January 26, 1983, the Audit Division issued a Statement of Audit Changes to petitioner and his spouse for the year 1979 which contained the following explanation:

"As a salary [sic] employee, you are not a business entity and therefore not entitled to claim Schedule C deductions, as these expenses are not ordinary and necessary to the production of income as an employee. An isolated transaction more or less does not constitute the carrying [sic] of a business. Therefore, since your wife had no income only a 201 reporting in Column A is allowable.

As your income exceeds \$25,000.00 no household credit is allowed."

4. The Audit Division recomputed petitioner's and his wife's New York State and City income tax liability for 1979 on a joint return basis. New York State and City taxable income of \$18,962.79 was computed in the following manner:

Wages	\$27,785.79
Other income	550.00
Interest	376.00
Capital gain	73.00
Balance	<u>\$28,784.79</u>
Modification	18.00
Corrected total income	<u>\$28,802.79</u>
Itemized deductions	<u>7,740.00</u>
Balance	<u>\$21,062.79</u>
Less: exemption	<u>2,100.00</u>
Taxable income	<u>\$18,962.79</u>

5. Based on the aforementioned Statement of Audit Changes, the Audit Division, on April 8, 1983, issued a Notice of Deficiency to petitioner for 1979 asserting additional New York State and City tax due of \$865.61, plus interest of \$287.72, for a total allegedly due of \$1,153.33.

6. Petitioner's tax return was 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. Petitioner's and his wife's claimed Schedule C deductions were disallowed on that basis.

7. Petitioner submitted documentary evidence in the form of sales invoices, cancelled checks and worksheets in substantiation of a portion of the business expenses claimed on both his and his spouse's Federal Schedule C. However, the evidence submitted did not relate to a characterization of the expenses as business rather than personal.

8. Petitioner contends:

(a) that the Notice of Deficiency was issued on an arbitrary and capricious basis just prior to the expiration of the period of limitations on assessment, thus depriving petitioner of the opportunity to present substantiation for the claimed deductions;

(b) that petitioner is one 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.

CONCLUSIONS OF LAW

A. That the Notice of Deficiency was properly issued and was not arbitrary and capricious. The return was patently erroneous and the Audit Division was justified in disallowing the business expenses claimed by petitioner and his spouse on their respective Federal Schedule C. The Notice of Deficiency was preceded by a Statement of Audit Changes and petitioner had an opportunity to file an amended return claiming employee business expenses as adjustments to income on Federal Form 2106, or as itemized miscellaneous deductions, but did not do so.

B. That the fact that petitioner's return was selected for examination because of certain practices of his accountant is irrelevant. Petitioner's liability depends solely on the facts adduced herein.


C. That petitioner has failed to sustain his burden of proof (Tax Law § 689[e]; Administrative Code § T46-189.0[e]) to show (i) that he and his wife were engaged in a trade or business other than as employees (Internal Revenue Code § 62[1]); (ii) that the expenses in question were trade or business deductions of employees 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 the petition of John Rucker is denied and the Notice of Deficiency dated April 8, 1983 is sustained in full, together with such additional interest as may be lawfully due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987.


PRESIDENT


COMMISSIONER


COMMISSIONER