

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arthur & Sydney Ziff :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article(s) 22 of the Tax Law for the :
Years 1978 & 1979. :

State of New York :

ss.:

County of Albany :

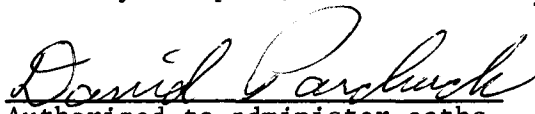
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 17th day of April, 1987, he/she served the within notice of Decision by certified mail upon Arthur & Sydney Ziff the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

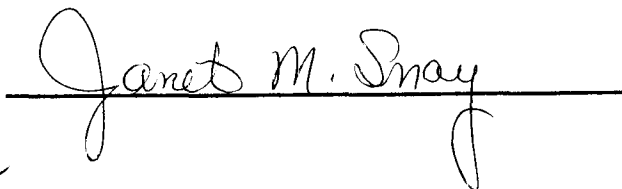
Arthur & Sydney Ziff
2 Pearlless Drive
Oyster Bay, NY 11711

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
17th day of April, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

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of
Arthur & Sydney Ziff :

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Tax under Article(s) 22 of the Tax Law for the :
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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 17th day of April, 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:

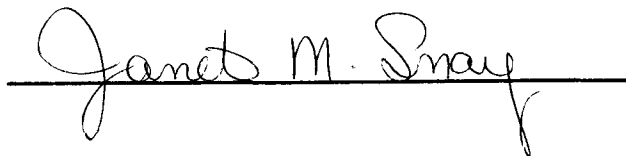
Louis F. Brush
101 Front St.
Mineola, NY 11501

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
17th day of April, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

April 17, 1987

Arthur & Sydney Ziff
2 Pearlless Drive
Oyster Bay, NY 11711

Dear Mr. & Mrs. Ziff:

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 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 St.
Mineola, NY 11501

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ARTHUR and SYDNEY ZIFF	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1978 and 1979.	:	

Petitioners, Arthur and Sydney Ziff, 2 Peerless Drive, Oyster Bay, New York 11711, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1978 and 1979 (File Nos. 40754 and 42480).

On October 23, 1985, petitioners 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 petitioners have substantiated that they were 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. (a) Petitioners, Arthur and Sydney Ziff, filed separate New York State Income Tax resident returns for 1978 on one form. Petitioner Arthur Ziff

stated his occupation to be "Math Consult./Writer", while petitioner Sydney Ziff stated her occupation to be "Teacher". The returns were received by the Department of Taxation and Finance on August 1, 1979.

(b) Petitioners also filed separate 1979 returns on one form. Arthur Ziff again stated his occupation to be "Math Consult./Writer" and Sydney Ziff stated her occupation to be "Research Asst.".

2. (a) For 1978, petitioner Arthur Ziff reported \$21,390.00 in business income. A Schedule C, Federal Form 1040, attached to the return reported the following income and expenses:

"Schedule C- Income From Business or Profession-Math Consultant/Writer

Income - Teaching	\$25,300.00	
Consulting		
Photography	2,492.00	
Shop	<u>125.00</u>	
		\$27,917.00

Expenses:

Photographic supplies & expense	\$ 1,846.00	
Electronic equipment & supplies	633.00	
Dark room maintenance	480.00	
Travel [6,155 mi. @ 17¢]	1,046.00	
Tolls	182.00	
Parking	211.00	
Books, supplies	183.00	
Magazines, newspapers	241.00	
Dues & subscriptions	339.00	
Telephone - inside		
(allocated \$10 per mo.)	120.00	
- outside	193.00	
Meeting promotion expense	978.00	
Accounting	<u>75.00</u>	
		<u>6,527.00</u>
	NET INCOME	<u>\$21,390.00"</u>

Attached to the return was a Wage and Tax Statement issued to petitioner Arthur Ziff by the Seaford Union Free-School District showing \$25,299.81 in "Wages,

tips, other compensation". The legend "Included in Schedule C" with an arrow pointing to said figure was stamped on the statement.

(b) Petitioner Sydney Ziff reported \$3,160.00 in salary income. Attached to the return was a Wage and Tax Statement issued to Sydney Ziff by the Oyster Bay - East Norwich Central School District in the amount of \$3,160.00. The statement also bore the stamped legend "Included in Schedule C" with an arrow pointing to the amount of income shown. It does not appear, however, that petitioner Sydney Ziff filed a Schedule C for 1978.

3. (a) For 1979, petitioner Arthur Ziff reported \$14,336.00 in business income. The Schedule C stated the following income and expenses:

"Schedule C- Income From Business or Profession-Math Consultant/Writer

Income - Teaching	\$25,785.00	
Consulting	--	
Photography	--	
Shop	--	
	<hr/>	\$25,785.00

Expenses:

Travel (8,172 mi @ 18½¢)	1,512.00	
parking & tolls	<u>406.00</u>	\$1,918.00
Magazines, newspapers etc.		276.00
Dues & subscriptions		351.00
Telephone - inside (\$12 x 12 mos.)	232.00	
outside	<u>227.00</u>	459.00
Photographic supplies & expenses		2,058.00
Electronic equipment & supplies		714.00
Dark room maintenance		520.00
Accounting		150.00
Meeting promotion expenses		1,056.00
Hospitality		892.00
Office supplies		218.00
Briefcase, calculator		126.00
Postage & mailing		111.00
Research assistant - Sydney Ziff		<u>2,600.00*</u>
		<u>\$11,449.00</u>
	NET INCOME	<u>\$14,336.00</u>

* Included in wife's Schedule C"

Attached to the return was a Wage and Tax Statement issued to petitioner Arthur Ziff by Seaford Union Free-School District in the amount of \$25,785.34. Like the 1978 statement, this statement bore the stamped legend indicating that said amount was included in Schedule C. Mr. Ziff also filed an unincorporated business tax return for 1979, reporting \$14,336.00 in net profit with subtractions of \$25,785.00. A stamped arrow with the legend "FICA Wages Included in Schedule C" pointed to said latter figure. Accordingly, a net loss of \$11,449.00 was shown, with no tax due.

(b) Petitioner Sydney Ziff reported \$4,449.00 in business income for 1979. Her Schedule C stated her main business activity to be research assistant. The schedule showed the following income and expenses:

"Schedule C- Income From Business or Profession - Research Assistant

Income - Institutions		\$3,695.00	
from Arthur Ziff		<u>2,600.00</u>	\$6,295.00
Expenses -			
Travel (4,386 mi @ 18½¢)		811.00	
Telephone - inside (\$10 x 12 mos)	120.00		
outside	<u>153.00</u>	273.00	
Meeting & promotional expenses		422.00	
Supplies		126.00	
Hospitality		<u>214.00</u>	
			<u>\$1,846.00</u>
	NET INCOME		<u>\$4,449.00"</u>

An unincorporated business tax return filed by Sydney Ziff reported \$4,449.00 in net profit with an allowance for taxpayer services of \$890.00. Net income was reported to be \$3,559.00, which was less than the \$5,000.00 exemption, so no taxable income was shown. Petitioner Sydney Ziff received a Wage and Tax Statement from the Oyster Bay - East Norwich Central School District for 1979 showing \$3,694.93 in "Wages, tips, other compensation". A stamped legend indicated that this amount was included in Schedule C.

4. On the 1978 and 1979 personal income tax returns, petitioners reported itemized deductions. However, no miscellaneous deductions were claimed.

5. 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. Petitioners' claimed Schedule C deductions were disallowed on that basis.

6. (a) On March 17, 1982 the Audit Division requested additional information from petitioners. The information was never received, therefore, on July 28, 1982 the Audit Division issued a Statement of Audit Changes to petitioners stating as follows:

"Inasmuch as you have failed to reply to our letter of March 17, 1982, we must disallow expenses claimed in the amount of \$6,527.00. Also, itemized deductions claimed are disallowed and the standard deduction is allowed. Household credit is disallowed as income exceeds \$25,000.00."

Arthur Ziff's additional tax was stated to be \$1,143.56 and Sydney Ziff's additional tax was stated to be \$17.50. Also on July 28, 1982, the Audit Division issued a Notice of Deficiency to petitioners for \$1,161.06 in tax and \$145.30 in penalty, plus interest. On September 10, 1982, the Audit Division issued individual notices of deficiency to petitioners showing additional tax due from Arthur Ziff of \$1,143.56 and penalty of \$141.80, plus interest, and from Sydney Ziff, additional tax of \$17.50 and penalty of \$3.50, plus interest.

(b) On February 4, 1983, the Audit Division issued a Statement of Audit Changes to petitioners explaining as follows:

"As salaried employees, you are not considered business entities and therefore are not entitled to claim schedule C deductions, as these expenses are not ordinary and necessary for the production of income as employees.

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

Tax due from Arthur Ziff was computed at \$968.05 with a credit of \$12.66 for Sydney Ziff, resulting in a net deficiency of \$955.39. On April 8, 1983, the Audit Division issued a Notice of Deficiency to petitioner Arthur Ziff for \$955.39 in additional tax, plus interest.

7. Petitioners submitted documentary evidence which was insufficient to show that petitioner Arthur Ziff was engaged in business as a math consultant/writer or that petitioner Sydney Ziff was a research assistant during the years at issue. Petitioners were both employed as school teachers. Although it appears that petitioner Arthur Ziff may have operated a photography business in 1978, income and expenses attributable thereto were not substantiated.

8. 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. The Notice of Deficiency for 1978 was preceded by a letter and the Notice of Deficiency for 1979 was preceded by a Statement of Audit Changes; thus, 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 petitioner's have not sustained their burden of proof under section 689(e) of the Tax Law to show that they were engaged in a trade or business other than as employees. Thus, expenses claimed on Schedule C may not be deducted under section 62(l) of the Internal Revenue Code. While petitioner Arthur Ziff appears to have been involved with a photography business during 1978, this fact was not adequately proven, nor were expenses attributable to any such business properly substantiated.


D. That even if petitioners may have been entitled to deduct certain employee business expenses under sections 62(2) or 63(f) of the Internal Revenue Code if they 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.

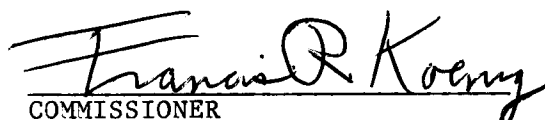
E. That the petition of Arthur and Sydney Ziff is denied and the notices of deficiency issued on July 28, 1982 and April 8, 1983 are sustained.

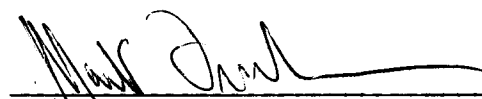
DATED: Albany, New York

STATE TAX COMMISSION

APR 17 1987


PRESIDENT


COMMISSIONER


COMMISSIONER