

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Marcel Goasdoue : 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 Chapter 46, Title T of the Administrative :
Code of the City of New York for the Years 1978 :
& 1979. :
:

State of New York :

ss.:

County of Albany :

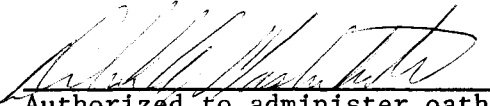
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of March, 1987, he/she served the within notice of Decision by certified mail upon Marcel Goasdoue the petitioner in the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

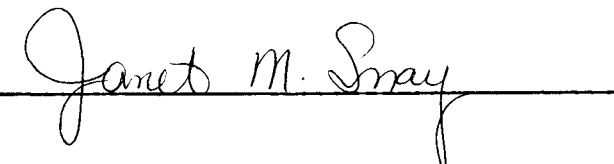
Marcel Goasdoue
365 West 263rd Street
Riverdale, NY 10471

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

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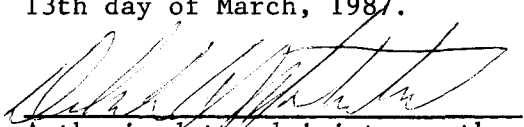
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of March, 1987, he served the within notice of Decision by certified mail upon Louis F. Brush, the representative of the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

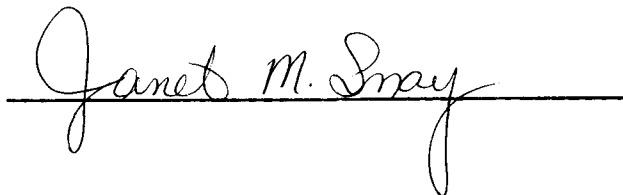
Louis F. Brush
101 Church St.
Mineola, NY 11501

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

Marcel Goasdoue
365 West 263rd Street
Riverdale, NY 10471

Dear Mr. Goasdoue:

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 Church St.
Mineola, NY 11501

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MARCEL GOASDOUE	:	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 Chapter 46, Title T of the Administra-	:	
tive Code of the City of New York for the Years	:	
1978 and 1979.	:	

Petitioner, Marcel Goasdoue, 365 West 263rd Street, Riverdale, New York 10471, filed a petition for redetermination of a deficiency or for refund of New York State and of New York City personal income tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1978 and 1979 (File Nos. 37544 and 42211).

On October 23, 1985, petitioner waived his right to a hearing and requested that a decision be rendered based on the entire record contained in the file, with all briefs to be submitted by October 8, 1986. Petitioner was represented by Louis F. Brush, Esq. The Audit Division was represented by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

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 the petitioner has substantiated that he was engaged in a trade or business during the years at issue.

III. Whether the 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. Petitioner, Marcel Goasdoue, filed New York State income tax resident returns, unincorporated business tax returns and New York City income tax nonresident returns for 1978 and 1979.

2. The 1978 income tax return listed Mr. Goasdoue's occupation as Researcher/Investor, and he reported \$30,499.00 in total income, consisting of \$23,053.00 in income from wages, salaries, tips and other compensation, \$472.00 in interest income and \$6,924.00 in business income.

(a) The attached Federal Schedule C shows revenues of \$15,000.00 allocated to research, \$400.00 from consultations and a net loss from rental of property of \$3,129.00, for a total of \$12,271.00. The Schedule C shows the following listed expenses:

Research travel	\$1,126.00
Magazines, newspapers, etc.	237.00
Recording supplies & expenses	298.00
Calculators, office supplies	221.00
Meetings & conferences with computer specialists	932.00
Accounting	125.00
W.W.O. & P.O.W. formula development	933.00
Harrison conference (2 weeks)	803.00
Messengers	325.00
Typing & O/S services	280.00
Postage & Xmas cards	67.00
Total	<u>\$5,347.00</u>

The \$5,347.00 in expenses deducted from revenues of \$12,271.00 resulted in the \$6,924.00 net business income reported.

(b) Two wage and tax statements attached to the return show income from "Wages, tips, other compensation" in the amounts of \$1,000.00 from Texaco, Inc. of White Plains, New York, and \$37,053.36 from Texaco, Inc. of Houston, Texas, respectively. Both statements are stamped with an arrow pointing to the \$1,000.00 and \$37,053.36 figures with the legend "Included in Schedule C".

(c) Mr. Goasdoue claimed total New York itemized deductions of \$6,964.00.

(d) Mr. Goasdoue filed a New York City Nonresident Earnings Tax Return for 1978 where he reported gross wages of \$1,000.00. He answered "No" to the following questions: (1) "Were you a New York City Resident for any part of the taxable year?"; (2) "Did you or your spouse maintain an apartment or other living quarters in the City of New York during any part of the year?"

(e) The unincorporated business tax return shows total business income of \$6,924.00 less \$15,000.00 in subtractions, resulting in a net loss of \$8,076.00. Accordingly, no unincorporated business tax was shown as due.

3. The 1979 income tax return lists Mr. Goasdoue's occupation as Researcher/Investor, and he reported total income of \$34,780.00, consisting of \$27,503.00 in income from "Wages, salaries, tips, etc.", \$919.00 in interest income and \$6,358.00 in business income.

(a) The attached Federal Schedule C shows revenues of \$15,000.00, "Allocation to Research", and a net loss from rentals of \$2,518.00, for total revenues of \$12,482.00 with the following listed expenses:

Research travel	\$2,397.00
Magazines, newspapers, etc.	264.00
Recording supplies & expenses	321.00
Office supplies	236.00
Meeting & conferences with computer specialists	1,058.00
Accounting	150.00
W.W.O. & P.O.W. formula development	982.00
Messengers	375.00
Typing & O/S services	317.00
Postage & Xmas cards	<u>94.00</u>
Total	\$6,194.00

The \$6,194.00 in total expenses was subtracted from revenues of \$12,482.00 and the result was shown as the \$6,358.00 net business income reported.¹

(b) Two wage and tax statements attached to the return show income from "Wages, tips, other compensation" in the amounts of \$1,500.00 from Texaco, Inc. of White Plains, New York, and \$41,003.36 from Texaco, Inc. of Houston, Texas. Like the 1978 statements, both statements are stamped with a red arrow pointing to the compensation figures with the legend "Included in Schedule C".

(c) Mr. Goasdoue claimed New York itemized deductions of \$11,900.00.

(d) Mr. Goasdoue's New York City Nonresident Earnings Tax Return showed gross wages of \$1,500.00. Again, he indicated that he was not a resident of the City of New York and maintained no living quarters there.

(e) The unincorporated business tax return filed for 1979 shows total income of \$6,358.00, less \$15,000.00 in subtractions, resulting in a net loss from business of \$8,642.00. Accordingly, no unincorporated business tax was shown as due.

¹ The correct difference between reported revenues and expenses is \$6,288.00.

4. Petitioner's tax returns were selected for examination along with those of approximately 100 other individuals because their returns had been prepared by a particular accountant. An investigation had disclosed that this accountant had consistently prepared returns on which an individual with wage or salary income shown on wage and tax statements had reported this 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.

5. On March 26, 1982, the Audit division issued a Statement of Audit Changes to Marcel and Aspasia Goasdoue for the year 1978 which contained the following explanation:

"The expenses claimed by husband on Federal Schedule C are not ordinary or necessary in the production of income as an employee; therefore, all schedule C expenses are disallowed. Husband's income from Wage and Tax Statement cannot be allocated and is not subject to unincorporated business [tax].

Total income also reported incorrectly on husband's NYC-203."

6. The Audit Division recomputed Mr. Goasdoue's and Mrs. Goasdoue's New York State and City tax liability for 1978.

(a) Mr. Goasdoue's total taxable income was determined as follows:

Wages/wage and tax statements	\$38,053.36
Interest income	472.00
Miscellaneous income	400.00
Rental income	3,129.00
Corrected total income	\$42,054.36
Less: itemized deductions	6,654.00
Balance	\$35,090.36
Less: Exemptions	1,950.00
Corrected New York taxable income	\$33,140.36

(b) The maximum tax credit was allowed.

7. Based on the Statement of Audit Changes, the Audit Division, on April 14, 1982, issued a Notice of Deficiency to Mr. Goasdoue for 1978 asserting additional New York State and New York City tax due of \$1,645.67 plus interest.²

8. On March 22, 1983, the Audit Division issued a Statement of Audit Changes to Mr. Goasdoue computing his taxable liability for 1979 on New York State and New York City taxable income of \$26,904.00 computed as follows:

Wages	\$42,503.00
Interest income	919.00
Rental loss	(2,518.00)
Total income	\$40,904.00
Itemized deductions	11,900.00
Exemptions	2,100.00
Corrected New York taxable income	\$26,904.00

9. Based on the Statement of Audit Changes, the Audit Division, on April 8, 1983, issued a Notice of Deficiency to Marcel Goasdoue asserting additional tax due for 1979 of \$734.88 plus interest.

10. Rental income of \$3,129.00, treated by the Audit Division as an addition to income in 1978, was actually a loss attributable to rental of property.

11. Petitioner submitted a substantial amount of documentation:

(a) Invoices and cancelled checks substantiated rental expenses for both years.

(b) Invoices, billing statements and cancelled checks showed expenditures for travel, computer equipment, entertainment, magazines, telephone

² Marcel Goasdoue and Aspasia Goasdoue filed returns for 1978 and 1979 under filing status "married filing separately on one return". After audit of the returns, no additional tax liability was asserted against Aspasia Goasdoue.

expenses, typing services and office supplies, etc., but there is no evidence that these expenses were other than personal in nature. The information provided was so scanty that it is not even possible to determine the nature of Mr. Goasdoue's consulting business. For example, \$933.00 was claimed in 1978 for expenses related to "WWO and POW formula development", but the abbreviations were never explained.

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 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.

13. Throughout 1978 and 1979, Mr. Goasdoue was a resident of New York City, Bronx County.

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 as it did. Each Notice of Deficiency was preceded by a Statement of Audit Changes and petitioner had an opportunity to file amended returns claiming employee business

expenses as adjustments on Federal form 2106 or substantiating the claimed business expenses, but did not do so.

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

C. That Mr. Goasdoue may have been engaged in a consulting business other than as an employee. However, he has not provided sufficient information to enable the Tax Commission to determine the character of the business and which of the claimed expenses were related to this business, which were employee business expenses and which were personal expenses. Thus, Mr. Goasdoue has not sustained his burden under section 689(e) of the Tax Law to show that he was entitled to the expenses claimed on Schedule C.

D. That Mr. Goasdoue has shown that he was entitled to subtract a net loss from rental property of \$3,129.00 from his 1978 New York taxable income. Furthermore, this loss was erroneously added rather than subtracted from Mr. Goasdoue's total income for 1978. Consequently, Mr. Goasdoue's New York taxable income for 1978 is reduced to \$26,882.36.

E. That Mr. Goasdoue may have been entitled to deduct certain employee business expenses under section 62(2) of the Internal Revenue Code; however, he failed to sustain his burden of proof under section 689(e) of the Tax Law to show the character of the claimed business expenses or their relationship to the services performed by him as an employee.

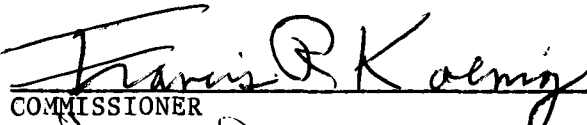
F. That the petition of Marcel Goasdoue is granted to the extent indicated in Conclusion of Law "D"; that the notices of deficiency issued on April 14, 1982 and April 8, 1983, respectively, will be modified accordingly; and that, in all other respects, the petition is denied.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987


PRESIDENT


COMMISSIONER


COMMISSIONER