

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

John & Patricia McAniff :

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 1980, 1981 and 1982.

State of New York :

ss.:

County of Albany :

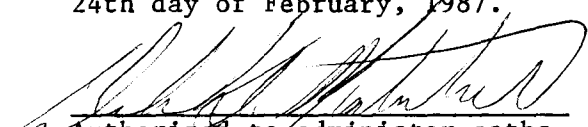
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 24th day of February, 1987, he/she served the within notice of decision by certified mail upon John & Patricia McAniff the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

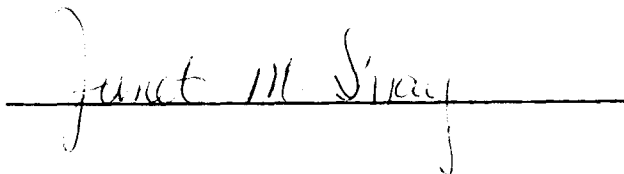
John & Patricia McAniff
17 Soloff Road
Massapequa, NY 11758

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
24th day of February, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174


Janet M. Snay

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

February 24, 1987

John & Patricia McAniff
17 Soloff Road
Massapequa, NY 11758

Dear Mr. & Mrs. McAniff:

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN MCANIFF AND PATRICIA MCANIFF	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1980, 1981 and	:	
1982.	:	

Petitioners, John McAniff and Patricia McAniff, 17 Soloff Road, Massapequa, New York 11758, 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 1980, 1981 and 1982 (File No. 62199).

A hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 11, 1986 at 10:45 A.M. Petitioner John McAniff appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether adjustments made to claimed business losses and medical and dental expenses were proper.

II. Whether penalties and interest may properly be waived.

FINDINGS OF FACT

1. John McAniff (hereinafter "petitioner") and his wife, Patricia McAniff, filed New York State income tax resident returns for the years 1980, 1981 and 1982. On each return petitioner claimed a business loss which was derived, according to his Federal schedules C annexed thereto, from his arts and crafts

business "Whispering Designs". According to such schedules, said business was conducted at petitioner's personal residence.

2. Petitioner's claimed business loss for each year at issue was computed as follows:

1980

Income

Leather products wholesaled \$ 125.00

Expenses

Telephone allocation \$15.00 x 12 =	\$ 180.00
Financial planning	250.00
Friends of the Dance - Promotion expense and meeting expense	435.00
Outside services - Chris McAniff	1,300.00
Newspapers, magazines etc.	110.00
Transportation (6,500 miles @ 20¢)	1,300.00
Music expense	150.00
Depreciation	<u>100.00</u>

TOTAL EXPENSES

\$3,825.00

LOSS

\$3,700.00

1981

Income

Leather products wholesaled \$ 350.00

Expenses

Materials: leather	\$ 105.00
Meeting expense	620.00
Tools	298.00
Selling expense	850.00
Telephone (\$15 x 12)	180.00
Depreciation	100.00
Accounting	150.00
Subscriptions	85.00
Selling expense: Leather production	358.00
Messengers - Chris McAniff	1,300.00
Travel (12,000 miles @ 20¢)	2,400.00
Dancing Friends expense	<u>550.00</u>

<u>TOTAL EXPENSES</u>	<u>\$6,996.00</u>
<u>LOSS</u>	<u>\$6,646.00</u>

1982

Income

Shop teaching, woodworking (from W-2)	\$33,466.00
Dancing Friends	<u>2,130.00</u>
Total Income	\$35,596.00

Expenses

Meeting expense	\$ 945.00
Telephone (\$20 x 12)	240.00
Allocation of office at home	600.00
Depreciation	500.00
Accounting	885.00
Records, etc.	125.00
Messengers - Chris McAniff	1,300.00
Travel (13,000 miles @ 20¢)	2,600.00
Dancing Friends expense	4,094.00
Less Tom Arnold's share of loss	<u>(906.00)</u>

<u>TOTAL EXPENSES</u>	<u>\$ 9,083.00</u>
-----------------------	--------------------

<u>Net Income Unadjusted</u>	\$27,713.00
------------------------------	-------------

<u>Adjustment to Reclassify W-2 Income</u>	(\$33,466.00)
--	---------------

<u>LOSS</u>	<u>\$ 7,053.00¹</u>
-------------	--------------------------------

3. On January 31, 1985, the Audit Division issued three (3) statements of audit changes whereon, as the result of an audit, the following adjustments were made:

1 As the result of several mathematical errors in petitioner's 1982 computation of business loss, the loss claimed, based on petitioner's income and expenses as reported above, computes to \$8,253.00 rather than \$7,053.00.

1980

	<u>Per Return</u>	<u>Corrected</u>	<u>Adjustment</u>
Business Income or (Loss)	\$(3,700.00)	\$ (125.00)	\$3,575.00
Medical & Dental Expenses	1,319.00	118.00	1,201.00
Total			<u>\$4,776.00</u>

1981

	<u>Per Return</u>	<u>Corrected</u>	<u>Adjustment</u>
Business Income or (Loss)	\$(6,646.00)	\$ (398.00)	\$6,248.00
Medical & Dental Expenses	1,941.00	91.00	1,850.00
Total			<u>\$8,098.00</u>

1982

	<u>Per Return</u>	<u>Corrected</u>	<u>Adjustment</u>
Business Income or (Loss)	\$(7,053.00)	\$(4,755.00)	\$2,298.00
Medical & Dental Expenses	638.00	-0-	638.00
Total			<u>\$2,936.00</u>

4. On April 8, 1985, the Audit Division issued three (3) notices of deficiency to petitioner and his wife as follows:

a - For 1980, asserting additional personal income tax of \$518.00, plus penalty of \$25.90 and interest of \$259.59, for a total due of \$803.49.

b - For 1981, asserting additional personal income tax of \$797.00, plus penalty of \$39.85 and interest of \$286.38, for a total due of \$1,123.23.

c - For 1982, asserting additional personal income tax of \$293.00, plus penalty of \$14.65 and interest of \$60.98, for a total due of \$368.63.

5. Said penalties were asserted for negligence pursuant to section 685(b) of the Tax Law.

6. The Notice of Deficiency issued for taxable year 1980 was timely since the 1980 return was late filed on September 7, 1982.

7. Petitioner conceded the aforesaid adjustments however, he argued that he should not be subject to the interest and penalty charges asserted since he believes that "the audits were in direct retaliation for an appeal filled [sic] by Louis F. Brush on a series of some ninety appeals on tax returns done by CPA Albert Sasson for years 1978 & 1979" and that "[i]f the bureau is to take issue with a C.P.A. let them do so directly with the C.P.A."

CONCLUSIONS OF LAW

A. That the adjustments made for the years at issue were conceded by the petitioner. Accordingly, such adjustments are hereby sustained.

B. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that the penalties asserted for negligence were improperly asserted. Accordingly, such penalties are sustained.


C. That interest must be charged on an underpayment of tax within the meaning and intent of section 684 of the Tax Law. The State Tax Commission does not have authority to waive interest.

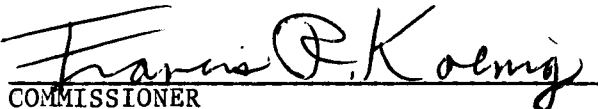
D. That the petition of John McAniff and Patricia McAniff is denied and the three (3) notices of deficiency issued April 8, 1985 are sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 24 1987


PRESIDENT


COMMISSIONER


COMMISSIONER