

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
LEELA SAGUNARTHY :
AND BRAHMANANDA SAGUNARTHY :
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1983 and 1984 :
: **DECISION**

In the Matter of the Petition :
of :
BRAHMANANDA SAGUNARTHY :
for Revision of a Determination or for Refund :
of Sales and Use Taxes under Articles 28 and 29 :
of the Tax Law for the Periods September 1, :
1980 through November 30, 1980 and September 1, :
1983 through November 30, 1983 :

Petitioners, Leela and Brahmananda Sagunarth, 15 Crest Drive, Clifton Park, New York 12065 filed an exception to the determination of the Administrative Law Judge issued on November 22, 1989 with respect to their petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1983 and 1984, and with respect to the petition of Brahmananda Sagunarth for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods September 1, 1980 through November 30, 1980 and September 1, 1983 through November 30, 1983 (File Nos. 805534, 805535, 805536 and 805503). Petitioners appeared by John G. Gilooly, C.P.A. The Division of Taxation appeared by William F. Collins, Esq. (Mark F. Volk, Esq., of counsel).

Petitioners did not file a brief. The Division, in a letter submitted in answer to petitioners' exception letter, reserved the right to file a brief if the petitioners' Notice of Exception differed materially from the letter of exception which they filed on December 26, 1989. The Division did not submit a brief. Oral argument was requested but not granted.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Division of Taxation properly concluded that petitioner Dr. Brahmananda Sagunarthi received constructive dividends from the professional corporation of B. Sagunarthi, P.C.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge and such facts are stated below.

ASSESSMENTS OF SALES AND USE TAXES

During the periods in issue, Dr. Sagunarthi was a dentist. For at least a portion of the audit period, he maintained practices in both Troy and Schenectady, New York.

On October 2, 1987, the Division of Taxation ("Division") issued two notices of determination and demands for payment of sales and use taxes due to Brahmananda Sagunarthi. The first notice assessed sales and use taxes for the period September 1, 1980 through November 30, 1980 in the amount of \$1,153.18 plus interest of \$913.71 for a total amount due of \$2,066.89. The second notice assessed sales and use taxes for the period September 1, 1983 through November 30, 1983 in the amount of \$564.34, plus interest of \$185.39 for a total amount due of \$749.73. In each instance, the amounts assessed in the notices were calculated on the basis of amounts reported on the balance sheets set forth with the New York State corporation franchise tax reports of B. Sagunarthi, P.C. for the fiscal years ended, respectively, October 31, 1981 and October 31, 1983. The tax returns were relied upon

to conduct the audit after it was ascertained that other records were not available for examination. At the hearing, petitioners' representative accepted the findings of liability for sales and use taxes.

ASSERTED DEFICIENCY OF PERSONAL INCOME TAX FOR THE YEAR 1983

Petitioners filed a New York State Resident Income Tax Return for the year 1983 wherein they elected a filing status of "Married filing joint return". They attached to their return a Federal Schedule C entitled Profit or (Loss) from Business or Profession wherein Dr. Sagunathy reported car and truck expenses of \$1,536.00. Dr. Sagunathy also reported legal and professional services expense of \$1,692.00 and depreciation expense on an automobile of \$6,175.00.

In the course of the audit, the Division concluded that petitioners were entitled to additional legal expenses of \$268.00. However, the Division disallowed 85 percent of the claimed automobile travel expense on the basis of a lack of substantiation. Furthermore, the Division considered Dr. Sagunathy's automobile to be used 15 percent of the time for business and adjusted the cost basis of the automobile accordingly. Thereafter, the Division recalculated petitioners' auto depreciation expense on the basis of a three-year useful life.

The audit revealed that the final corporation franchise tax report of B. Sagunathy, P.C. contained a balance sheet account of loans to shareholders which had a reported value of \$54,448.00. Since the corporation was dissolved, the Division concluded that some activity must have occurred on this account such that the debt was paid, forgiven or written off as a bad debt. Therefore, the Division requested that Dr. Sagunathy present evidence that the loan by the corporation had been repaid. Since no evidence was forthcoming, the Division concluded that there had been a constructive dividend arising from the forgiveness of the debt.

On the basis of the foregoing audit, the Division issued a Notice of Deficiency to petitioners which asserted a deficiency of personal income tax for the year 1983. The notice, which was issued February 11, 1987, asserted that tax was due in the amount of \$8,061.70 plus interest of \$2,417.27 for a total amount due of \$10,478.97.

ASSERTED INCOME TAX DEFICIENCY OF LEELA SAGUNARTHY FOR 1984

On February 11, 1987, the Division issued a Notice of Deficiency to Leela Sagunarthi which asserted a deficiency of personal income tax for the year 1984 in the amount of \$61.15 plus interest of \$8.96 for a balance due of \$70.11. At the hearing, petitioners' representative declined to dispute this asserted deficiency of personal income tax.

***ASSERTED INCOME TAX DEFICIENCY OF
BRAHMANANDA SAGUNARTHY FOR 1984***

The Division conducted an audit of Dr. Sagunarthi's personal income tax return for the year 1984 which resulted in the conclusion that Dr. Sagunarthi was entitled to an additional deduction for legal fees of \$2,705.00. However, since Dr. Sagunarthi did not have any business records, the Division disallowed 85 percent of his reported automobile travel expenses. The Division also adjusted the amount of depreciation claimed on the automobile in the same manner as that which was done for the year 1983. Moreover, the Division reduced the amount of a capital loss which had been claimed. Lastly, the Division recalculated the amount of depreciation which Dr. Sagunarthi had claimed on rental property which had been acquired in 1984. Specifically, the Division calculated the depreciation on the basis of a 40-year useful life whereas petitioners computed the depreciation on the basis of a 15-year useful life.

On the basis of the foregoing audit findings, the Division issued a Notice of Deficiency to Dr. Sagunarthi. The notice, which was issued February 11, 1987, asserted that personal income tax was due in the amount of \$1,238.70 plus interest of \$181.48 for a total amount due of \$1,420.18.

Following issuance of the last Notice of Deficiency, the Division reconsidered its position with respect to the depreciation of the rental property. That is, the Division concluded that Dr. Sagunarthi should be permitted to depreciate the rental property over a period of 25 years rather than 40 years which had been used to calculate the last Notice of Deficiency. On the basis of the revised depreciation calculations, the Division prepared a new Statement of Personal Income Tax Audit Changes which explained that personal income tax was asserted to

be due for the year 1984 in the amount of \$875.30 plus interest of \$209.09 for a total amount due of \$1,084.39.

OPINION

In the determination below, the Administrative Law Judge held that petitioners failed to present sufficient evidence to overcome the burden of proof required of them to establish that the asserted deficiencies of tax were erroneous (Tax Law § 689[e]).

On exception, petitioners' only objection relates to the matter of the constructive dividends. Petitioners allege, as they did below, that Dr. Sagunarthi was the only shareholder and only the shareholder would have paid this debt. Further, petitioners allege that since all parties accept the fact that there are no outstanding liens on the corporation, it follows that there was an influx of money and, therefore, Dr. Sagunarthi was the one who repaid this debt.

In response, the Division argues that the Administrative Law Judge correctly determined that petitioners failed to establish the repayment of the corporate loan by Dr. Sagunarthi, as there was no evidence from Dr. Sagunarthi that he repaid the loan to the corporation and, further, there was no documentary evidence submitted that would support an inference that the loan was repaid.

We affirm the determination of the Administrative Law Judge.

We find no basis in the record before us for modifying the Administrative Law Judge's determination in any respect. Therefore, we affirm the determination of the Administrative Law Judge for the reasons stated in his determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioners Leela Sagunarthi and Brahmananda Sagunarthi is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petitions of Leela Sagunarthi and Brahmananda Sagunarthi are denied; and

4. The notices of determination dated October 2, 1987 and the notice of deficiency dated February 11, 1987 are sustained except as modified by conclusion of law "B" of the determination of the Administrative Law Judge.

DATED: Troy, New York
August 17, 1990

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner