

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>JOE MARSH, JR.</b>	:	DECISION
	:	DTA No. 806490
for Redetermination of Deficiencies or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1982 through 1984.	:	

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Petitioner Joe Marsh, Jr., 742 Wyandot Street, Findlay, Ohio 45840, filed an exception to the determination of the Administrative Law Judge issued on February 18, 1993. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Donna M. Gardiner, Esq., of counsel).

Petitioner did not file a brief. The Division of Taxation filed a brief in opposition to petitioner's exception. The six-month period to issue this decision began on June 24, 1993, the date by which petitioner could submit a reply brief.

Commissioner Koenig delivered the decision of the Tax Appeals Tribunal. Commissioner Dugan concurs.

***ISSUE***

Whether petitioner carried his burden of demonstrating entitlement to certain business deductions under Tax Law § 612(a).

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

On June 25, 1986, the Division of Taxation ("Division") issued to petitioner, Joe Marsh, Jr., at 80 Harbor Road, Oyster Bay, New York 11771, two statements of personal income tax audit changes, one statement for the years 1982 and 1983 and the other statement for 1984. The statements indicated that New York State personal income tax returns were not filed for income

earned at the Roosevelt Raceway in the amounts of \$39,594.00 in 1982, \$40,675.00 in 1983 and \$56,895.00 in 1984. Allowing a standard deduction and one exemption, the Division calculated tax due in the amounts of \$2,989.34 for 1982, \$3,097.50 for 1983 and \$4,719.50 for 1984, plus interest and penalties for the total amounts of \$5,658.75 (1982), \$5,254.38 (1983) and \$7,185.48 (1984).

Thereafter, the Division issued to petitioner two notices of deficiency, dated September 8, 1986. One notice asserted additional tax due for 1982 and 1983 in the amount of \$6,086.84, plus penalty and interest, for the total amount of \$11,043.87. Another notice asserted additional tax due for 1984 in the amount of \$4,719.50, plus interest and penalty, in the total amount of \$7,273.08.

On January 14, 1988, the Division received from petitioner 1982, 1983 and 1984 resident income tax returns with the mailing address of 742 Wyandot Avenue, Findlay, Ohio 45840. Attached to each of the returns was a Schedule C, Form 1040, with respect to profit or loss from business or profession. The forms indicated petitioner's main business activity as harness racing with the business name and address of Joe Marsh Jr. Stables, 742 Wyandot, Findlay, Ohio 45840.

On the 1982 return, petitioner claimed total business income in the amount of \$118,790.65, with deductions and expenses that totaled \$105,666.25 as follows:

Advertising	\$ 315.18
Bank Service Charge	217.21
Car and Truck Expenses	2,302.11
Dues and Publications	74.50
Freight	2,468.00
Insurance	5,125.00
Interest on business indebtedness	4,402.03
Laundry and cleaning	1,320.00
Legal and professional services	1,463.93
Office supplies and postage	428.89
Rent on business property	7,320.00
Repairs	4,000.00
Taxes	1,547.20
Travel and entertainment	2,395.39
Utilities and telephone	4,717.42
Blacksmith	5,365.89
Veterinary	2,835.60
Feed and Hay	12,634.78
Sublet labor	33,600.00
Parking and tolls	1,200.00
Harness equipment	1,131.00

Licenses	321.00
Leases	4,247.12
Paddock	3,600.00
Colors	1,134.00
Workmen's compensation	1,500.00

Petitioner, therefore, reported \$13,124.40 (\$118,790.65 - \$105,666.25) as his total income in 1982 with \$417.00 as tax due.

On the 1983 tax return, petitioner reported gross business income as \$93,577.22, less total deductions of \$91,465.47, for a net profit of \$2,111.75, which amount he reported as his only income in 1983 with no tax due. On the 1984 tax return, petitioner reported \$19,594.00 as his business income (\$184,260.68 gross income less \$164,666.57 deductions) with tax due of \$949.00. On both returns the categories of business expenses were similar to the deductions he reported on the 1982 return (see above).

In lieu of a conciliation conference, petitioner opted to have the matter decided by correspondence. On September 9, 1988, the conferee issued a Conciliation Order sustaining the statutory notices. However, the conferee noted that payments of \$838.81 and \$1,593.11 had been received for 1982 and 1984, respectively.

On December 12, 1988, the Division received a petition signed by petitioner and Margie A. Bassitt, his representative. On the front page of the petition where the printed form states "Petitioner hereby petitions for," the petitioner checked the box "other," next to which he wrote the notation "review expenses and deductions." Petitioner alleged the following errors on the part of the Division:

"[t]hese years were filed upon receipt of forms to do so - as all taxes had been paid to the State of Ohio. This is said to have been done in error. We would like to try to prove this assessment is in excess of amount actually owed."

By answer dated February 25, 1991, the Division denied the allegations in the petition and affirmatively stated the following:

"during the years 1982, 1983 and 1984, petitioner maintained a permanent place of abode in the State of New York and spent more than 183 days of the year in the State of New York . . .

"that during the years 1982, 1983 and 1984 the petitioner was a domiciliary of New York State . . .

"that during the years at issue petitioner was a 'resident individual' as defined in section 605(b) of the Tax Law; and Further States that pursuant to section 601 of the tax Law, petitioner is liable for the payment of personal income tax for the years at issue . . .

"that petitioner failed to file New York State Personal Income Tax returns for the years at issue . . .

"that on September 8, 1986 the Division of Taxation properly issued to petitioner Notices of Deficiency A8606294071 and A8606294061 for the years at issue . . .

"that the burden of proof is upon the petitioner to prove that the determination of the Division of Taxation is improper and/or erroneous."

Neither party has submitted a brief or letter articulating an argument with respect to the pleadings.

### ***OPINION***

In the determination below, the Administrative Law Judge held that Tax Law § 689(e) requires a taxpayer to prove the incorrectness of a deficiency and, in the matter at hand, found that petitioner failed to demonstrate his entitlement to the deductions claimed on Schedule C of his tax returns or to a credit with respect to taxes he allegedly paid to the State of Ohio. The Administrative Law Judge held that a taxpayer, in addition to demonstrating entitlement to a deduction, must also substantiate the amount of the deduction.

The Administrative Law Judge further held that other than the late-filed tax returns, petitioner presented no evidence to substantiate the expenses claimed on said tax returns and absent such substantiation, petitioner has failed to rebut the presumption of correctness of the two notices of deficiency.

On exception, petitioner points out that he tried "to submit by mail any documents that I felt backed up our IRS papers - all things were turned to me saying they couldn't understand what to do with them (checks, receipts, bank statements, rent receipts, etc.)" (Petitioner's exception). Petitioner further points out that some of the things were damaged by a water leak.

Petitioner states that the "questioning of the amount of monies made and spent is causing unjust questioning of our IRS papers." Petitioner argues further that he showed that tax payments were made to Ohio rather than New York (Petitioner's exception).

The Division agrees with the analysis of the Administrative Law Judge, arguing that petitioner failed to submit any proof to support the allegations relating to his exception. However, the Division attempts to clarify the Administrative Law Judge's determination by stating that the two notices of deficiency at issue were not adjusted by the conciliation conferee, but rather, two other assessments for the years 1982 and 1984 were paid in full. We reject this attempt by the Division to clarify the Administrative Law Judge's determination. The Division has not required us to review this issue by filing a timely exception (see, Matter of Auriemma, Tax Appeals Tribunal, September 17, 1992; Matter of Armel, Tax Appeals Tribunal, July 23, 1992; Matter of Caleri, Tax Appeals Tribunal, August 11, 1988; Matter of Klein's Bailey Foods, Tax Appeals Tribunal, August 4, 1988), and we see no reason to exercise our discretion under 20 NYCRR 3000.11(e)<sup>1</sup> to review same.

We affirm the determination of the Administrative Law Judge.

In addition, because we find that the Administrative Law Judge completely and adequately addressed the issues before her, we see no reason to analyze these issues further; nor do we see any reason to hold otherwise and, therefore, affirm the Administrative Law Judge based on the reasons stated in her determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Joe Marsh, Jr. is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Joe Marsh, Jr. is denied; and

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<sup>1</sup>20 NYCRR 3000.11(e) permits the Tribunal to review the record and "to the extent necessary or desirable, exercise all the powers which it could have exercised if it had made the determination."

4. The two notices of deficiency dated September 8, 1986 are sustained.

DATED: Troy, New York  
December 9, 1993

/s/John P. Dugan

John P. Dugan  
President

/s/Francis R. Koenig

Francis R. Koenig  
Commissioner