

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions	:	
of	:	
RONALD GRUNBERG, INDIVIDUALLY	:	DETERMINATION
AND AS OFFICER OF EMIL KAHN, LTD.	:	DTA NOS. 818224
	:	AND 818225
for Redetermination of Deficiencies or for Refund of	:	
New York State and New York City Income Taxes	:	
under Article 22 of the Tax Law and the New York	:	
City Administrative Code for the Years 1994, 1995	:	
and 1996.	:	

Petitioner, Ronald Grunberg, 1365 York Avenue, New York, New York 10021, filed two petitions for redetermination of deficiencies or for refund of New York State and New York City personal income tax under Article 22 of the Tax Law and the New York City Administrative Code for the years 1994, 1995 and 1996.

A small claims hearing was held before Gary R. Palmer, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York on May 30, 2002 at 1:15 P.M. Petitioner appeared by Julie C. Kelley, E.A. The Division of Taxation appeared by Barbara G. Billet, Esq., (Mac Wyszomirski). As neither party requested time to file a post-hearing brief, the three-month period for the issuance of this determination commenced on May 30, 2002.

ISSUE

Whether, the Division of Taxation properly disallowed losses arising out of the operations of Emil Kahn, Ltd., and claimed on petitioner's New York State and City of New York personal

income tax returns for the years 1994, 1995 and 1996, upon the assertion that Emil Kahn, Ltd. did not file an election to be treated as a small business corporation for New York State and City of New York tax purposes for each year at issue.

FINDINGS OF FACT

1. Petitioner filed New York State and City of New York resident income tax returns for the years 1994, 1995 and 1996. In each of these filed returns he reported an S corporation loss in the respective sums of \$16,113.00, \$25,122.00 and \$20,648.00. The corporation sustaining the loss in each instance was Emil Kahn, Ltd. ("the corporation"), whose address during the years at issue was 1365 York Avenue, New York, New York 10021.

2. The corporation was incorporated in the State of New York on November 18, 1993 and was engaged in the jewelry manufacturing business. Petitioner was the corporation's president and sole shareholder during the years at issue. Effective January 1, 1994 the Internal Revenue Service approved the corporation's election to be treated as a Federal S corporation.

3. The corporation filed its short form general business corporation franchise tax return (form CT-4) on a calendar year basis for each year at issue. At no time prior to or during the years at issue was a form CT-6 (election by shareholders of a small business corporation for New York personal income tax and corporation franchise tax purposes) filed with the Department of Taxation and Finance.

4. On November 24, 1997, the Division issued a separate statement of personal income tax audit changes to petitioner for each of the three years at issue, whereby petitioner was informed that the claimed subchapter S loss for each year had been disallowed, and that he was required to add back the amount of the loss in order to compute his corrected New York adjusted

gross income. Thereafter, on January 20, 1998 a separate notice of deficiency was issued to petitioner for each year at issue in the following amounts:

Year/Jurisdiction	Tax Amount	Interest Amount	Balance
1994 NYS	1,268.00	313.50	1,581.50
1994 NYC	708.00	175.05	883.05
1995 NYS	1,907.00	284.98	2,191.98
1995 NYC	1,104.00	164.98	1,268.98
1996 NYS	1,471.00	93.10	1,564.10
1996 NYC	909.00	57.53	966.53

SUMMARY OF THE PARTIES' POSITIONS

5. Petitioner avers that his first accountant did not represent him properly in that it had been petitioner's intent to file a subchapter S election for both State and Federal purposes, and that he relied on his first accountant to file the form CT-6, which he concedes was not done.

6. The Division maintains that although the corporation was a Federal S corporation during the years at issue, it remained a C corporation for New York State and City purposes, and petitioner is required to add back the corporate losses reported when computing his New York adjusted gross income.

CONCLUSIONS OF LAW

A. Section 660(a) of the Tax Law provides that shareholders of an S corporation for Federal income tax purposes may elect to take into account the S corporation items of income, loss, deduction and reduction for taxes on personal income tax returns filed with New York State. Tax Law § 612(b) provides as follows:

(b) Modifications increasing federal adjusted gross income. There shall be added to federal adjusted gross income:

* * *

(19) In the case of a shareholder of an S corporation

(A) where the election provided for in subsection (a) of section six hundred sixty has not been made with respect to such corporation, any item of loss or deduction of the corporation included in federal gross income pursuant to section thirteen hundred sixty-six of the internal revenue code

B. The Division alleges and petitioner concedes that the shareholder election provided for in Tax Law § 660(a) was not accomplished. In such cases Tax Law § 612(b)(19)(A) makes clear that to compute his New York adjusted gross income, the taxpayer must include the modification increasing Federal adjusted gross income by adding back the corporate losses included in the Federal gross income (*see, Matter of Jurist*, Tax Appeals Tribunal, September 30, 1993). The Division properly disallowed petitioner's reported subchapter S losses for 1994, 1995 and 1996.

C. The petitions of Ronald Grunberg are denied and the notices of deficiency dated January 20, 1998 are sustained.

DATED: Troy, New York
August 8, 2002

/s/ Gary R. Palmer
PRESIDING OFFICER