

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ROBERT J. AND LINDA M. JARVIS	:	DETERMINATION
	:	DTA NO. 820588
for Redetermination of Deficiencies or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law	:	
for the Years 1998 and 1999.	:	

Petitioners, Robert J. and Linda M. Jarvis, filed a petition for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1998 and 1999.

On July 6, 2006, petitioners, appearing pro se, and the Division of Taxation, appearing by Daniel Smirlock, Esq. (Peter B. Ostwald, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by December 5, 2007, which date commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

ISSUES

I. Whether the Division of Taxation properly determined petitioners' tax liability for the years 1998 and 1999.

II. Whether reasonable cause exists to abate the penalties assessed.

FINDINGS OF FACT

1. Petitioners, Robert J. and Linda M. Jarvis, filed applications for automatic extension of time to file for individuals (forms IT-370) for the years 1998 and 1999. The Division of Taxation (Division) searched its records and was unable to locate petitioners' New York State income tax returns for the years 1998 and 1999. As a result, on or about December 11, 2002, the Division sent a letter to petitioners requesting that they file income tax returns for the years 1998 and 1999. Petitioners did not respond to that letter.

2. On March 20, 2003, the Division issued two statements of proposed audit changes to petitioners, one for the year 1998 and the other for the year 1999, each of which contained the following explanation:

Your New York State audit covers more than one year. A separate bill will be issued for each individual tax year covered in our previous letter. You may not receive all of the bills on the same day.

A search of our files fails to show a New York State income tax return filed under your name or social security number. Therefore, your New York State income tax is estimated as allowed by New York State Income Tax Law.

Under section 683(c) of the New York State Tax Law, tax may be assessed at any time if no return is filed.

If you previously filed a New York State return for the above [applicable] tax year, please forward a complete copy including wage and tax statements. . . .

* * *

You have been allowed the appropriate [\$13,000.00] New York standard deduction.¹

Penalty for late filing has been applied at 5% per month up to a maximum of 25% (section 685(a)(1) of the New York State Tax Law).

¹ A standard deduction based upon married filing joint return filing status was allowed.

A negligence penalty of 5% is imposed on the total correct tax. The penalty is applied to total correct tax before prepayments, rather than the balance due, because you did not file a return (section 685(m) of the New York State Tax Law).

In addition to the 5% negligence penalty, an amount equal to 50% of any interest due on a deficiency or portion of a deficiency attributable to negligence or intentional disregard of the Tax Law has been imposed (section 685(b)(2) of the New York State Tax Law).

All taxpayers must prepay each year's tax, either by having tax withheld or by paying estimated tax.

Since no prepayments have been made through withholding tax or estimated tax, a penalty for underpayment of estimated tax has been imposed.

Interest is due for late payment or underpayment at the applicable rate, interest is required under the New York State Tax Law.

Petitioners' New York State personal income tax was calculated on each of the statements as follows

Federal adjusted gross income	\$59,600.00
New York adjusted gross income	\$59,600.00
New York deduction	\$13,000.00
Dependent exemptions	0.00
New York taxable income	\$46,600.00
New York State tax	\$ 2,400.00
Total New York State tax	\$ 2,400.00

As set forth in the explanation on each of the statements, penalties and interest were also asserted. The Division based its estimation of tax asserted to be due for each of the years at issue on information obtained from a search of its information return master file for sources and amounts of income received by petitioners in 1999, which amounts were reported to the Division by various payors.

3. Petitioners never responded to either the Statement of Proposed Audit Changes for the year 1998 or the Statement of Proposed Audit Changes for the year 1999. Consequently, the Division issued to petitioners two notices of deficiency, one for each year at issue. The first Notice of Deficiency (Notice No. L-022104678-2), dated May 15, 2003, asserts New York State personal income tax due for 1998 in the amount of \$2,400.00, plus penalty of \$1,197.47 and interest of \$765.96, for a total amount due of \$4,363.43. The second Notice of Deficiency (Notice No. L-022104665-5), dated May 15, 2003, asserts New York State personal income tax due for 1999 in the amount of \$2,400.00, plus penalty of \$1,096.15 and interest of \$550.73, for a total amount due of \$4,046.88. On each of these notices, the Division imposed penalties pursuant to Tax Law § 685(a)(1)(a) for failure to file the return, Tax Law § 685(b) for negligence and Tax Law § 685(c) for failure to pay estimated income tax.

4. Petitioners have two children, Laura, born in May 1981, and Christopher, born in December 1982. Prior to and during the years at issue, petitioners and their minor children resided in Loudonville, New York. For the years 1998 and 1999, Laura filed New York State resident income tax returns on which she claimed a filing status of single and a New York standard deduction in the amount of \$3,000.00, i.e., the standard deduction allowed a single person who can be claimed as a dependent on another taxpayer's federal income tax return (dependent filer's standard deduction). For the year 1999, Christopher filed a New York State resident income tax return on which he claimed filing status of single and a dependent filer's standard deduction in the amount of \$3,000.00.

5. For the year 1998, Mrs. Jarvis received wage income in the amount of \$25,259.39 from the South Colonie Central School District (South Colonie Schools), which issued a Form W-2, Wage and Tax Statement, to her. On this 1998 wage and tax statement, the South Colonie

Schools also reported Mrs. Jarvis's public employee contributions (414[H] contributions) of \$887.48 and New York State tax withheld in the amount of \$575.70.

6. For the year 1999, Mrs. Jarvis received wage income in the amount of \$25,470.78 from the South Colonie Schools. On her 1999 wage and tax statement, the South Colonie Schools also reported Mrs. Jarvis's public employee contributions (414[H] contributions) of \$798.64 and New York State tax withheld in the amount of \$551.31.

7. Statements of interest income (1099-INT forms) for the year 1998 show that petitioners received interest income from Trustco Bank, Troy Savings Bank, Capital Communications Federal Credit Union, Marine Midland Bank and Greenwood Trust Company in the respective amounts of \$36.89, \$18.87, \$4.33, \$1.59 and \$50.78, or a total of \$112.46 in interest income for the year.

8. Statements of interest income (1099-INT forms) for the year 1999 show that petitioners received interest income from Trustco Bank, Troy Savings Bank, Capital Communications Federal Credit Union, HSBC (the successor to Marine Midland Bank) and Greenwood Trust Company in the respective amounts of \$11.08, \$19.85, \$30.07, \$4.55 and \$49.22, or a total of \$114.77 in interest income for the year.

9. Robert Jarvis, a patent attorney, provided patent maintenance services to Beeche Systems Corp. (Beeche) for its domestic and foreign patents during the years at issue. In early 1998, Mr. Jarvis rendered professional services to Beeche for renewal of its Australian, Belgian, Swiss, United Kingdom and United States patents. A billing statement, dated May 20, 1998, indicated that the total amount due for the renewal of these patents, including costs and disbursements, was \$4,465.00. In mid to late 1998, Mr. Jarvis rendered services to Beeche for renewal of its Austrian, Canadian, French, German, Italian, Luxembourg, Netherlands, Swedish

and Japanese patents, and for initiating and applying for Hong Kong patent registration of an invention. A billing statement for these services, dated December 14, 1998, indicated that the total amount due, including costs and disbursements, was \$13,423.00.

10. In 1999, Mr. Jarvis rendered professional services to Beeche for renewal of its Austrian, Canadian, French, German, Italian, Luxembourg, Netherlands, Swedish, Japanese, Australian, Belgian, Swiss, United Kingdom and Korean patents. A review of the billing statements indicates that in 1999, Mr. Jarvis billed Beeche a total of \$33,186.00 for the services he rendered in connection with the renewal of its foreign patents, including costs and disbursements.

11. During the audit, the Division searched its information return master file for sources and amounts of income earned by petitioners during the years 1998 and 1999, which amounts were reported to the Division by various payors. As part of its documentary submission, the Division included a printed copy of its search results in its audit work papers. A review of the Division's printed search results indicates that Beeche paid Mr. Jarvis the amount of \$4,465.00 and \$33,186.00, in the years 1998 and 1999, respectively. However, the record does not include copies of the actual information returns issued to Mr. Jarvis by Beeche for the years 1998 and 1999.

12. With respect to the renewal of foreign patents for Beeche, Mr. Jarvis was charged by various foreign servicing agents for their part in renewing the patents involved, including the government office fees and their service charges. The record includes copies of the billing statements issued to Mr. Jarvis by patent attorneys in Australia, Belgium, Switzerland, Canada, France, Germany, Italy, Luxembourg, the Netherlands, Sweden, Japan, the United Kingdom, Austria, and Korea for services they rendered for him during the years 1998 and 1999. Undated

handwritten notations appear on these billing statements. The record does not include copies of receipts for fees allegedly charged by a bank for the issuance of international bank drafts during the years 1998 and 1999.

13. The record does not include any type of bookkeeping ledger or journal in which legal fees collected from clients were recorded by Mr. Jarvis during the years 1998 and 1999. The record also does not include any business bank statements for the years 1998 and 1999.

14. Petitioners' Loudonville, NY address was listed as Mr. Jarvis's business address on the billing statements issued to Beeche by him during the years at issue. This address was also listed as his business address on the attorney registration form issued to him by the New York State Office of Court Administration for the biennial registration period 1999 through 2000. Neither the total square footage of petitioners' Loudonville, NY home nor the square footage of the space within the Loudonville, NY home allegedly used for Mr. Jarvis's business is part of the record.

15. On or about April 26, 1999, Mr. Jarvis renewed his biennial registration as an attorney licensed to practice law in New York State and paid his \$300.00 registration fee by check drawn on petitioners' joint personal Trustco Bank checking account.

16. Petitioners had a mortgage serviced by Troy Savings Bank (lender) on their Loudonville, NY home prior to and during the years at issue. The annual statement issued by the lender for the year 1998 shows petitioners' payment of mortgage interest in the amount of \$7,485.67 and real estate taxes in the amount of \$4,284.71. For the year 1999, the annual statement issued by the lender shows petitioners' payment of mortgage interest in the amount of \$7,031.05 and real estate taxes in the amount of \$4,290.92.

17. The record includes several billing summary pages for electric and gas service provided to petitioners' Loudonville, NY home by Niagara Mohawk during the year 1999. A review of these billing summary pages indicates that petitioners made budget payments totaling \$2,632.00 in the year 1999.

18. The record includes the account summary pages from billing statements issued to Mr. Jarvis by Bell Atlantic during 1999. A review of these Bell Atlantic account summary pages indicates that a total of \$258.49 was deducted from Mr. Jarvis's unidentified bank account automatically during 1999. Further review of these Bell Atlantic account summary pages indicates that charges for Bell Atlantic basic local services totaled \$185.63 in 1999. It is noted that the telephone number listed on the Bell Atlantic account summary pages is the same telephone number listed as his business telephone number on all billing statements issued to Beeche by Mr. Jarvis during 1999 and the Office of Court Administration's attorney registration form issued to Mr. Jarvis for the biennial registration period 1999 through 2000.

19. A review of the Division's information return master file search results indicate that Mr. Jarvis also earned income from S & S Long Term Interest in the amount of \$119.00 and \$14.00, in the years 1998 and 1999, respectively. The record does not include copies of the actual information returns issued to Mr. Jarvis by that entity for the years at issue.

20. For tax year 1998, Mrs. Jarvis made a \$100.00 contribution to her individual retirement account maintained at the Cohoes Savings Bank. For the same tax year, Mr. Jarvis made a \$250.00 contribution to his individual retirement account maintained at Prudential Securities.

21. For calendar year 1998, Greenwood Trust Company issued a Statement For Recipients of Interest Income (Substitute form 1009-INT) to Mrs. Jarvis and Nellie Caputo, under Mrs.

Jarvis's social security number, reporting a total of \$50.78 in deposit interest earned on two savings accounts, account A deposit interest in the amount of \$23.88 and account B deposit interest in the amount of \$26.90.² In a letter to Greenwood Trust Company, dated March 30, 1999, Mrs. Jarvis advised the bank that it erroneously reported deposit interest earned in the amount of \$26.90 on savings account B under her social security number, rather than under Ms. Caputo's social security number, the other joint owner of this account. Mrs. Jarvis's letter further requested that Greenwood Trust Company issue a corrected Substitute form 1099-INT for calendar year 1998 for account B. A corrected Substitute form 1099-INT is not part of the record. The total interest earned by Mrs. Jarvis on Greenwood Trust Company accounts A and B in 1998 is noted above in Finding of Fact 7.

22. For calendar year 1999, Greenwood Trust Company issued a Substitute form 1099-INT to Mrs. Jarvis and Nellie Caputo, under Mrs. Jarvis's social security number reporting a total of \$49.22 in deposit interest earned on two savings accounts, account A in the amount of \$23.59 and account B in the amount of \$25.63. A handwritten notation appears on the Substitute form 1099-INT issued to Mrs. Jarvis by Greenwood Trust Company for the calendar year 1999 which states that account B "is Nellie Caputo's, and should have been reported under her [social security number]." The record does not include a letter advising Greenwood Trust Company of this alleged error for calendar year 1999 or a corrected Substitute form 1099-INT issued by Greenwood Trust Company for calendar year 1999. The total interest earned by Mrs. Jarvis on Greenwood Trust Company accounts A and B in 1999 is noted above in Finding of Fact 8.

² For purposes of this proceeding these two Greenwood Trust Company savings accounts will be designated as account A and account B.

23. In April 1999, petitioners received an income tax refund in the amount of \$1,111.30 for the year 1991 from the Division, which issued a Statement of Tax Overpayment (form 1099-G) to petitioners reporting the amount of \$819.50 to the Internal Revenue Service.

24. In accordance with the initial document and briefing submission schedule set in this matter, the Division's documents were received by the Division of Tax Appeals on August 18, 2006. After six extensions, the record in this matter closed on October 1, 2007, the final date set for submission of petitioners' documents and initial brief. As noted above, the various documents submitted by petitioners do not include their federal income tax returns for the years 1998 and 1999 or their New York State resident income tax returns for the years 1998 and 1999. The Division did not undertake an audit review of the documents submitted by petitioners in this proceeding.

CONCLUSIONS OF LAW

A. Tax Law § 651(a)(1) provides, in pertinent part, as follows:

(a) General. On or before the fifteenth day of the fourth month following the close of the taxable year, an income tax return under this article shall be made and filed by or for:

(1) every resident individual (A) required to file a federal income tax return for the taxable year, or (B) having federal adjusted gross income for the taxable year, increased by modifications under subsection (b) of section six hundred twelve, in excess of four thousand dollars, or in excess of his New York standard deduction, if lower, or (C) subject to tax under section six hundred two, or (D) having received during the taxable year a lump sum distribution any portion of which is subject to tax under section six hundred three. . . .

Generally, New York income tax must be assessed within three years of the date of filing of the return (Tax Law § 683[a]). If no return is filed, however, then the tax may be assessed at any time (Tax Law § 683[c][1][A]).

B. Tax Law § 681(a) provides, in pertinent part, as follows:

If upon examination of a taxpayer's return under this article the tax commission determines that there is a deficiency of income tax, it may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file an income tax return required under this article, the tax commission is authorized to estimate the taxpayer's New York taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer.

C. In the instant matter, the Division commenced its audit of petitioners in December 2002 after a review of its records failed to disclose any New York State income tax returns for the years 1998 and 1999. The Division made a written request to petitioners for documentation that would address the issue of petitioners' failure to file their personal income tax returns for the years at issue. Petitioners failed to supply any documentation. Indeed, petitioners did not file personal income tax returns for the years 1998 and 1999 prior to the issuance of the notices of deficiency. The Division was therefore authorized to estimate petitioners' personal income tax liability "from any information in its possession" (Tax Law § 681[a]; *see also Lysek v. Commr.*, 34 TCM 1267 [1975], *aff'd* 583 F2d 1088 [9th Cir 1978]). Here, the Division had in its possession information returns issued to petitioners by various payors of items of income in the year 1999. Pursuant to Tax Law § 681(a), the Division was authorized to use this information to estimate petitioners' personal income tax liability for the years at issue.

D. Where, as here, the Division properly issues a Notice of Deficiency to a taxpayer, a presumption of correctness attaches to such notice (*see Matter of Land Transport Corporation*, Tax Appeals Tribunal, June 29, 2000; *Matter of Atlantic & Hudson Ltd. Partnership*, Tax Appeals Tribunal, January 30, 1992). In proceedings for review of a properly issued notice of deficiency, the burden of proof is on the taxpayer to demonstrate that the deficiency is erroneous (Tax Law § 689[e]). The starting point for determining New York personal income tax liability is a taxpayer's federal adjusted gross income (Tax Law § 612[a]; 20 NYCRR 112.1). Since the

New York State personal income tax law is patterned after the Federal income tax laws, the Internal Revenue Code (IRC) provides guidelines with respect to the treatment of income and the deductibility of various expenses.

E. As noted above, petitioners failed to submit any documentation for the years 1998 and 1999 to the Division prior to the issuance of the notices of deficiency at issue in this matter.

After six extensions, petitioners submitted documentation on October 1, 2007, the final date set for the submission of petitioners' documentation in this matter. The Division did not undertake an audit review of the documents submitted by petitioners in this proceeding. Petitioners assert that they have submitted sufficient documentary evidence to show that the Division's determinations of tax due for the years at issue are incorrect. They maintain that they have methodically addressed each of the items shown as "potential income" in the Division's audit work papers, i.e., the Division's information return master file search results, and have shown how each item affects petitioners' gross income for the years 1998 and 1999. Petitioners further maintain that they also methodically established their expenses against business income, adjustments to gross income, dependents' exemption amount, and tax prepayments for the years at issue. The Division contends that the evidence submitted by petitioners to substantiate their claimed income and deductions for the tax years at issue is not reliable. As such, the Division maintains that petitioners are not entitled to any further adjustments to the notices of deficiency.

F. Initially, it is necessary to comment generally on the evidence submitted. The parties elected to proceed by written submission of this matter. Petitioners submitted various documents and the affirmation of petitioner Robert Jarvis, an attorney licensed by the State of New York. The pertinent Treasury Regulation provides that "any person required to file a return of information with respect to income, *shall keep such permanent books of account or records . . .*

as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return or such tax or information” (Tres Reg § 1.6001-1[a]; emphasis added). In addition, as an attorney, Mr. Jarvis was further required to maintain for seven years after the events which they record, pursuant to Disciplinary Rule DR 9-102 (D)(1) of the Lawyer’s Code of Professional Responsibility of the New York State Bar Association:

1. The records of all deposits in and withdrawals from the [Attorney’s Trust Account] and of any other bank account which concerns or affects the lawyer’s practice of law. These records shall specifically identify the date, source and description of each item deposited, as well as the date, payee and purpose of each withdrawal or disbursement.

In this case, the documentary evidence submitted by petitioners consisted of information returns issued to either Mr. Jarvis or Mrs. Jarvis by various payors for the years 1998 and 1999, Laura Jarvis’s 1998 and 1999 New York State income tax returns, Christopher Jarvis’s 1999 New York State income tax return, and some documents allegedly related to Mr. Jarvis’s business, a legal practice conducted in New York State during the periods at issue. Petitioners did not submit the bookkeeping ledger or journal in which legal fees collected from clients by Mr. Jarvis were recorded during the years at issue. They also failed to submit any business bank statements or any receipts for international bank drafts issued during the years 1998 and 1999. Mr. Jarvis’s explanation, in his affirmation, of the significance of the documents allegedly related to his legal practice was very vague and provided limited information about the conduct of his legal practice during the years at issue. His affirmation did not include any explanation of the manner in which he maintained the books and records for his legal practice, and it also failed to identify the bank in which he maintained his business account and the bank that allegedly issued the international bank drafts during the years 1998 and 1999. Petitioners also did not submit copies of their

federal or New York State income tax returns for the years at issue. Indeed, petitioners failed to file their New York State income tax returns for the years 1998 and 1999 prior to the close of the record in this matter, i.e., October 1, 2007.

G. As noted in Conclusion of Law D, the starting point for determining New York personal income tax liability is a taxpayer's federal adjusted gross income (Tax Law § 612[a]; 20 NYCRR 112.1). Section 62(a)(1) of the Internal Revenue Code defines adjusted gross income as an individual's gross income minus certain deductions. Among the deductions permitted are deductions for expenses which are "ordinary and necessary" for the production of income (IRC § 162[a]), and a deduction for retirement savings (IRC § 219). The taxpayer has the double burden of (1) demonstrating entitlement to the deduction and (2) substantiating the amount of the deduction (*see* Tax Law § 658[a]; § 689[e]; 20 NYCRR 158.1; *Matter of Macaluso*, Tax Appeals Tribunal, September 22, 1997 **confirmed** 259 AD2d 795, 686 NYS2d 193 [1999]).

H. Using information in its possession in accordance with Tax Law § 681(a), the Division estimated petitioners' tax liability for the year 1998, and issued a Notice of Deficiency reflecting such determination. Specifically, the Division determined petitioners' New York adjusted gross income to be \$59,600.00, allowed a standard deduction of \$13,000.00, and computed petitioners' tax liability to be \$2,400.00 for the year 1998. Based upon the documentary evidence which they submitted, petitioners assert that their 1998 New York adjusted gross income would total \$26,115.80, and would consist of the following income items and adjustments to income: Mrs. Jarvis's wage income in the amount of \$25,259.39 received from the South Colonie Schools; Mrs. Jarvis's public employee retirement contributions in the amount of \$787.48; petitioners' interest income in the total amount of \$85.56; Mr. Jarvis's S & S Long Term interest income in the amount of \$119.00; Mr. Jarvis's net business income in the amount of \$214.37; and

petitioners' IRA contributions of \$350.00. After allowances for the New York standard deduction of \$13,000.00 and their \$2,000.00 dependents' exemption, petitioners contend that their 1998 New York taxable income would be \$11,115.80, and the tax due on that amount would be \$445.00.

I. For the year 1998, petitioners did not submit copies of their federal or New York State income tax returns. Rather, they submitted information returns issued to them by various payors, some documents related to Mr. Jarvis's legal practice and Mr. Jarvis's affirmation. While the information returns confirm that wage income was earned by Mrs. Jarvis in 1998 and that petitioners did receive interest income in that year as well, I find the documentary evidence submitted to substantiate Mr. Jarvis's claimed net business income to be sorely deficient. It is impossible to verify Mr. Jarvis's claim that his gross legal fees totaled only \$4,465.00 in the year 1998 because petitioners failed to submit the bookkeeping ledger or journal in which legal fees collected from clients by Mr. Jarvis were recorded or any business bank statements issued during that year. Petitioners contend that Mr. Jarvis is entitled to deduct from the receipts of his legal practice his expenses which were ordinary and necessary in carrying on his trade or business. They claim that Mr. Jarvis, in conjunction with the patent maintenance services that he rendered to Beeche, paid foreign patent serving agents a total of \$2,937.06 in 1998 for the renewal of the corporation's foreign patents. Although they did submit copies of four invoices issued to Mr. Jarvis by foreign patent servicing agents, petitioners failed to submit any receipts for international bank drafts issued with respect to those invoices during the year 1998, and a deduction for the alleged payments cannot be allowed.

Petitioners also claim that a deduction in the amount of \$1,313.57, representing the business portion of the 1998 mortgage interest and property tax payments for their Loudonville,

NY home, should be allowed against Mr. Jarvis's business receipts because his business office space is housed within the Loudonville home. A taxpayer is not entitled to deduct any expenses of using his home for business purposes unless they are attributable to a portion of the home (or separate structure) used exclusively on a regular basis as the principal place of any business carried on by the taxpayer (IRC § 280A[c][1][A]). In his affirmation, Mr. Jarvis asserted that his business office space occupied 11.16% of the total building space of petitioners' Loudonville, NY home. Given Mr. Jarvis's failure to provide any specific details concerning his alleged office space, it is impossible to determine what specific portion of petitioners' Loudonville, NY home was used as his office and whether that portion was used exclusively for the purpose of carrying on a trade or business. As such, the claimed business expense deduction in the amount of \$1,313.57 cannot be allowed. Petitioners also maintain that they made Individual Retirement Account contributions totaling \$350.00 in 1998, which contributions should be deducted from their gross income in arriving at their federal adjusted gross income for the year. Since petitioners failed to submit a copy of their 1998 federal income tax return and sufficient source documentation to determine Mr. Jarvis's net earnings from his legal practice, it is impossible to determine if petitioners are entitled to deduct their IRA contributions from their gross income in 1998 (*see* IRC § 219[c], [g]).

In sum, after careful review of the evidence submitted, I find that no adjustment to the Division's determination of petitioners' federal or New York adjusted gross income for the year 1998 is warranted.

J. In its calculation of petitioners' tax liability for the year 1998, the Division did not allow any dependent exemptions. The record clearly establishes that petitioners had two minor dependent children, Laura and Christopher, residing with them during 1998. Therefore they are

entitled to two dependent exemptions for 1998 (*see* Tax Law § 616[a]). Petitioners claim that they are entitled to a household credit of \$55.00 against their New York State tax liability for the year 1998. Since I have determined that no adjustment to the Division's determination of petitioners' federal adjusted gross income is warranted, petitioners' household gross income exceeds the amount which qualifies for the household credit (Tax Law § 606[2][B]). In its determination of petitioners' tax liability for the year, the Division did not allow a credit for taxes withheld in 1998. Petitioners have established that they had New York State tax withheld in the amount of \$575.70 in 1998, and therefore, a credit should be allowed for such withheld taxes.

K. With respect to the interest earned on Greenwood Trust Company account B for the years at issue, i.e., \$26.90 for 1998 and \$25.63 for 1999, Mr. Jarvis, in his affirmation, asserts that although this account was a joint account between his wife and her mother, it was opened, and always maintained, under the social security number of Nellie Caputo, and the interest earned on the account was previously always correctly reported under Ms. Caputo's social security number. Mr. Jarvis further asserts that despite his wife's letters to Greenwood Trust Company advising the company of its errors, the company apparently has never issued corrected forms 1099-INT. Petitioners have failed to prove that the interest income earned on Greenwood Trust Company account B in the years 1998 and 1999 should be excluded from their gross income for both years. The documentation submitted by petitioners in support of their position did not include corrected statements for recipients of interest income for account B issued by the bank for the years 1998 and 1999 (Tax Law § 689 [e]). Accordingly, the interest income earned on Greenwood Trust Company account B was properly included in petitioners' federal gross income for the years 1998 and 1999.

L. Using information in its possession in accordance with Tax Law § 681(a), the Division estimated petitioners' tax liability for the year 1999, and issued a Notice of Deficiency reflecting such determination. Specifically, the Division determined petitioners' New York adjusted gross income to be \$59,600.00, allowed a standard deduction of \$13,000.00, and computed petitioners' tax liability to be \$2,400.00 for the year 1999. Based upon the documentary evidence which they submitted, petitioners aver that their New York adjusted gross income would total \$29,535.91, and would consist of the following income items and adjustments to income: Mrs. Jarvis's wage income in the amount of \$25,470.78 received from the South Colonie Schools; Mrs. Jarvis's public employee retirement contributions in the amount of \$798.64; petitioners' interest income in the total amount of \$89.14; Mr. Jarvis's S & S Long Term interest income in the amount of \$14.00; and Mr. Jarvis's net business income in the amount of \$3,163.35. After allowances for the New York standard deduction of \$13,000.00 and their \$2,000.00 dependents' exemption, petitioners assert that their 1999 New York taxable income would be \$14,535.91, and the tax due on that amount would be \$581.00.

M. For the year 1999, again petitioners did not submit copies of their federal or New York State income tax returns. Rather, as for 1998, they submitted information returns issued to them by various payors, some documents related to Mr. Jarvis's legal practice and Mr. Jarvis's affirmation. While the information returns confirm that wage income was earned by Mrs. Jarvis, and petitioners received interest income and a refund of New York State income tax for a prior year, i.e., 1991, in 1999, I find the documentary evidence submitted to substantiate Mr. Jarvis's claimed net business income for the year 1999 also to be sorely deficient. It is impossible to verify Mr. Jarvis's claim that his gross legal fees totaled only \$33,186.00 in the year 1999 because petitioners failed to submit the bookkeeping ledger or journal in which legal fees

collected from clients by Mr. Jarvis were recorded or any business bank statements issued during that year. Petitioners contend that Mr. Jarvis is entitled to deduct from the receipts of his legal practice his expenses which were ordinary and necessary in carrying on his trade or business. They claim that Mr. Jarvis, in conjunction the patent maintenance services that he rendered to Beeche, paid foreign patent serving agents a total of \$27,906.90 in 1999 for the renewal of the corporation's foreign patents. Although they did submit copies of numerous invoices issued to Mr. Jarvis by foreign patent servicing agents during 1998 and 1999, petitioners failed to submit any receipts for international bank drafts issued with respect to those invoices during the year 1999, and a deduction for the alleged payments cannot be allowed. Petitioners also claim that a deduction in the total amount of \$1,557.26 (\$1,293.53 for the alleged business portion of the 1999 mortgage interest and property tax payments for their Loudonville, NY home) plus \$293.73 for the alleged business portion of the 1999 Niagara Mohawk utility charges for their Loudonville, NY home, should be allowed against Mr. Jarvis's business receipts because his business office space is housed within their Loudonville, NY home. I am unable to determine what specific portion of petitioners' Loudonville, NY home was used as his office in 1999 and whether that portion was used exclusively for the purpose of carrying on a trade or business in that year because Mr. Jarvis's affirmation lacked specific details concerning his legal practice, his office space and petitioners' Loudonville, NY home. As such, the claimed deduction in the total amount of \$1,557.26 for expenses associated with the business use of petitioners' home cannot be allowed. Petitioners claim that Bell Atlantic telephone charges in the amount of \$258.49 should be allowed as a deduction against Mr. Jarvis's business income in 1999. IRC § 262(b) provides that "in the case of an individual, any charge (including taxes thereon) for basic local telephone service with respect to the 1st telephone line provided to any residence of the taxpayer

shall be treated as a personal expense.” Although Mr. Jarvis, in his affirmation, avers that the Bell Atlantic charges were charges for the telephone number “used exclusively for the law business” in 1999, he failed to provide any details about any other telephone lines provided to petitioners’ Loudonville, NY home. Therefore, a deduction in the amount of \$72.86 (\$258.49 less \$185.63), representing the additional charges for Bell Atlantic services in excess of the basic local services charges for the telephone number is allowed (*see* IRC § 262[b]). Evidence in the record establishes that Mr. Jarvis renewed his biennial registration as an attorney licensed to practice law in New York State and paid his \$300.00 New York State attorney registration fee on or about April 26, 1999. Therefore, a \$300.00 business expense deduction is allowed (IRC § 162[a]; Treas Reg § 1.162-6).

In sum, after careful review of the evidence submitted, I find that the Division’s determination of petitioners’ Federal adjusted gross income for the year 1999 should be reduced by \$372.86, the amount of the expenses which I have determined to be ordinary and necessary business expenses for the year.

N. In his affirmation, Mr. Jarvis claims that the \$819.00 shown as potential income to him from the State of New York on the Division’s information return master file search results corresponds to a New York State income tax refund of \$819.50 paid to Mr. and Mrs. Jarvis in 1999, which refund was for a prior tax year. He further claims that this \$819.00 item has no effect on petitioners’ New York tax liability because if any amount of this refund is includible in their federal gross income, it is taken back out of New York gross income as a “New York subtraction.” Given petitioners’ failure to submit sufficient documentation to establish Mr. Jarvis’s net business income, I find no adjustment to petitioners’ 1999 New York adjusted gross income for this amount is warranted.

O. In its calculation of petitioners' tax liability for the year 1999, the Division did not allow any dependent exemptions. The record clearly establishes that petitioners had two minor dependent children, Laura and Christopher, residing with them during 1999. Therefore they are entitled to two dependent exemptions for 1999 (*see* Tax Law § 616[a]). Petitioners claim that they are entitled to a household credit of \$35.00 against their New York State tax liability for the year 1999. Although I have determined that the Division's determination of petitioners' federal adjusted gross income for the year 1999 should be reduced by \$372.86, petitioners' household gross income for the year exceeds the amount which qualifies for the household credit (Tax Law § 606[2][B]). In its determination of petitioners' tax liability for the year, the Division did not allow a credit for taxes withheld in 1999. Petitioners have established that they had New York State tax withheld in the amount of \$551.31 in 1999, and therefore, a credit should be allowed for such withheld taxes.

P. For the years 1998 and 1999, penalties were imposed for failure to file returns (Tax Law § 685[a][1][A]; deficiencies due to negligence (Tax Law § 685[b]) and for failure to pay estimated income tax (Tax Law § 685[c]).

Although Mr. Jarvis is a patent attorney licensed by the State of New York, he and his wife failed to file their income tax returns for the years 1998 and 1999 (*see* Findings of Fact 1 and 24; *see also* Conclusion of Law F). The penalties under Tax Law § 685(a)(1)(A) are automatic since petitioners did not file returns for 1998 and 1999. Pursuant to Tax Law § 685(b)(1) and (2), if any part of a deficiency is due to negligence, negligence penalties (i) equal to five percent of the deficiency and (ii) equal to 50% of the interest payable, respectively, "shall be added to the tax." Mr. Jarvis's failure to maintain adequate records of his income and expenses clearly supports the imposition of negligence penalties (*see Matter of Eisner*, Tax Appeals Tribunal, March 22,

1990). Penalties under Tax Law § 685(c) were also properly imposed for petitioners' failure to pay estimated income taxes for the years at issue. The only taxes paid by petitioners in 1998 and 1999 were the taxes withheld from Mrs. Jarvis's wage income received from the South Colonie Central Schools for those years (*see* Findings of Fact 5 and 6).

Q. The petition of Robert J. and Linda M. Jarvis is granted to the extent indicated in Conclusions of Law J, M and O, but is in all other respects denied. The Division of Taxation is directed to recompute the subject deficiencies for the years 1998 and 1999 in accordance therewith. As so modified, the notices of deficiency, dated May 15, 2003, are sustained.

DATED: Troy, New York
June 5, 2008

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE