

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-87 (7) I
Income Tax
November 20, 1987

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I870908C

On September 8, 1987, a Petition for Advisory Opinion was received from Bernard and Joyce Ouziel, 13 Schoolhouse Lane, Great Neck, New York 11020.

The issue raised is whether New York State follows Internal Revenue Service procedures on repetitive audits.

Petitioners were examined by the Internal Revenue Service for taxable year 1983. The items questioned in the audit were federal Schedule C business expenses. The audit resulted in no change in reported tax. Petitioners have now been notified that they will be audited by New York State for personal income tax purposes for taxable years 1984 and 1985. Internal Revenue Service procedures allow an audit to be avoided if the taxpayer was audited on the same issue in either of the two prior years. Petitioners argue that since New York State has reciprocal information arrangements with the Internal Revenue Service and basically follows Internal Revenue Service procedures, New York State should follow Internal Revenue Service procedures on repetitive audits.

Section 697(b) of the Tax Law provides:

(b) Examination of books and witnesses. - (1) The tax commission for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable income of any person, shall have the power to examine or to cause to have examined, by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

There is no provision of New York State law, regulation or policy which adopts the Internal Revenue Service policy regarding repetitive audits. In any event, New York State is a separate and distinct taxing authority which would, during the course of an audit, examine a number of state issues (e.g. allocations, modifications, credits) which would be of no concern during a federal audit.

Consequently, there is no basis whatsoever for Petitioners' request for relief from a repetitive audit.

DATED: November 20, 1987

s/ANDREW F. MARCHESE
Chief of Advisory Opinions
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.