

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
FAZAL AHMAD, P.C.	:	DECISION
	:	DTA No. 806595
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the years 1981	:	
and 1982	:	

Petitioner Fazal Ahmad, P.C., 4200 Avenue K, #3G, Brooklyn, New York 11210 filed an exception to the determination of the Administrative Law Judge issued on February 14, 1991 with respect to its petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1981 and 1982. Petitioner appeared by its president, Fazal Ahmad, M.D. The Division of Taxation appeared by William F. Collins, Esq. (Herbert Kamrass, Esq., of counsel).

Neither petitioner nor the Division of Taxation filed a brief.

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

ISSUES

I. Whether petitioner properly substantiated certain deductions taken for the tax years ended December 31, 1981 and December 31, 1982.

II. Whether petitioner should be allowed to offset additional taxes assessed by the Division of Taxation with net operating losses carried forward from previous years or carried back from subsequent years.

FINDINGS OF FACT

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

On August 28, 1985, the Division of Taxation issued to petitioner, Fazal Ahmad, M.D., P.C., a Notice of Deficiency for the period ended December 31, 1981 which set forth additional tax due of \$6,471.00, interest of \$3,474.00 and penalty of \$3,236.00, for a total amount due of \$13,181.00. On the same date, the Division of Taxation issued to Fazal Ahmad, M.D., P.C. a second Notice of Deficiency for the period ended December 31, 1982 setting forth tax due in the sum of \$6,839.00, interest of \$2,228.00 and penalty of \$3,420.00, for a total amount due of \$12,487.00.

Prior to the issuance of the notices of deficiency, on June 7, 1985, the Division of Taxation issued to Fazal Ahmad, M.D., P.C. a Statement of Franchise Tax Audit Changes which explained the additional taxes as follows:

<u>"Explanation</u>	<u>1981</u>	<u>1982</u>
Revision of AU-251.6 of 1.14.85 Based upon an audit, your Franchise Tax has been recomputed as follows:		
Repairs	\$ 2,736.	
Bad debts	16,695.	\$ 3,842.
Rents	3,970.	2,850.
Depletion	5,294.	
Advertising	4,057.	4,675.
Salaries	372.	
Pension	(3,940.)	1,720.
Depreciation	9,850.	2,550.
Other deductions	47,054.	59,052.
Net adjustment	86,088.	74,689.
Taxable income as reported '81 as corrected	(18,880.)	3.
Corrected taxable income	67,208.	74,692.
Tax at 10%	6,721.	7,469.
Minimum tax - franchise tax	6,721.	7,469.
Net tax	6,721.	7,469.
Tax previously paid '81 as adjusted by Albany	250.	630.
Tax due	6,471.	6,839.
Penalties [Tax Law §] 1085(e)	3,236.	3,420.
Interest	3,213.	1,991.
Total due	12,920.	12,250."

After further substantiation was provided by petitioner at conference, a Conciliation Order was issued on November 23, 1988 wherein the total deficiency for the years 1981 and 1982 was reduced to \$5,504.00 and minimum interest. The penalty was cancelled.

In arriving at that figure, a recomputation of the tax and balance due was calculated by the Division of Taxation, a summary of which is as follows:

"Recomputation of Tax and Balance Due

	<u>1981</u>	<u>1982</u>
Taxable income per previous assessment	\$67,208.00	\$74,692.00
Less: adjustment per Conciliation and Mediation	37,727.00	40,308.00
Corrected taxable	29,481.00	34,384.00
Franchise tax - 10% of corrected taxable income	2,948.00	3,438.00
Less: tax previously paid per return	<u>250.00</u>	<u>630.00</u>
Balance	2,698.00	2,806.00
Add: interest as of 9/26/88	<u>2,789.52</u>	<u>2,118.12</u>
Total due	5,487.52	4,924.12"

This reduction of the deficiency was a result of a reexamination of disallowed deductions for the years 1981 and 1982. The following chart indicates the Division's review of the substantiating documentation produced by petitioner at conference:

"Re-examination of disallowed deductions -
(substantiation of documents)

Year Ended 12/31/81:

<u>Name of Deductions</u>	<u>Per Tax Return</u>	<u>Per Re-examination</u>	<u>Dis-allowed</u>	<u>Remarks for Disallowance</u>
Repairs	3030	294	2736	documents were personal expenses.
Bad Debts	16695	4750	11945	Falsification of documents to claim medicaid was denied.
Depletion	5294	0	5294	Old medicine expired were already deducted previously as supplies expense.
Auto Expense	2282	0	2282	No documents.
Gifts	793	300	493	Dis-allowed - personal exp.
Cleaning	3131	611	2520	Not sufficient doc.
Loans	1670	0	1670	To pay taxes are not deductible.
Legal & Professional fees	5021	0	5021	Check issued were personal and does not work in office
Meals	3950	0	3950	Regular lunch and dinners in office - personal exp.
Printing	1735	500	1235	No documents

Supplies	3193	2892	301	Not documented
Travel & Entertainment	2718	0	2718	No diary & Personal Exp.
Casualty Loss	5486	3090	2396	Not deductible losses.
Transportation	<u>4800</u>	0	<u>4800</u>	Personal expenses
Total Deduction Disallowed			48361	
Year Ended <u>12/31/82</u> :				
Bad Debts	3842	0	3842	Non-deductible
Rent	13303	12750	553	No documents
Gifts	1000	125	875	Personal disbursements
Insurance	5875	4575	1300	Paid to Life Insurance Policy
Loans	5090	0	5090	Not deductible [illegible]
Meals	3876	0	3876	Lunch & dinner disallowed
Temporary help	10425	7209	3216	No documents
Travel & Entertainment	997	0	997	" "
Transportation	4800	0	4800	" "
Depreciation	2550	1550	1000	Corrected computation
Casualty Loss	7411	4650	2761	Not deductible [illegible]
Printing	2760	0	2760	No documents
Supplies	1215	0	1215	" "
Auto Expense	<u>1896</u>	0	<u>1896</u>	No documents & diary
Total Disallowed			<u>34387"</u>	

Petitioner produced various items of substantiating documentation for the deductions taken in the year 1981, but never submitted any documentation with regard to the year 1982, even though allowed time after hearing to do so. Additionally, petitioner produced no evidence of the corporation's dissolution, although asserted by petitioner at hearing, and despite the fact that petitioner was given an ample amount of time to produce proof of same.

With regard to the year 1981, petitioner produced essentially the same information it produced to the Division's auditor at the conciliation conference. Indeed, petitioner's president stated that the documentation presented at hearing was the same produced at conference. The only difference found in the items produced at hearing was substantiation of \$432.96 in repair bills and personal checks paid to Khan's Plumbing & Heating Supplies by petitioner in that amount. As noted above, petitioner was allowed only \$294.00 in repair expenses by the Division in its reexamination of the substantiating documentation produced at conference.

Petitioner claimed no net operating loss deduction on its U.S. corporation income tax returns for the years 1984, 1983, 1982 and 1981. Additionally, it is noted that although there were losses for the years 1979 and 1980, as reflected on the U.S. corporation income tax returns filed on behalf of Fazal Ahmad, P.C., no net operating losses were carried forward from those years to the years 1981 and 1982. Likewise, although there were losses indicated on the Federal corporation income tax returns for the years 1983 and 1984, no net operating loss carrybacks were claimed for 1981 or 1982.

OPINION

In the determination below, the Administrative Law Judge held that the burden of proof in this matter was on petitioner and for the year ended December 31, 1981, petitioner had shown only that it is entitled to a small allowance with regard to its "repairs" deduction. The Administrative Law Judge also found that the documentation provided at hearing could not be specifically identified and correlated with those deductions taken on the New York State Corporation Tax Report for the period ended December 31, 1981 and, since petitioner did not add anything to the documentation produced to the Division of Taxation (hereinafter the "Division") (other than the "repair" documentation), the reasons for the Division's disallowance of said deductions remained valid and proper.

For the year 1982, the Administrative Law Judge sustained the assessment as revised at conference since petitioner failed to submit any documentation with regard to claimed 1982 deductions. The Administrative Law Judge further found that petitioner failed to submit any documentation or other proof that the corporation had been dissolved during the period in issue and, therefore, did not abate the tax for that reason. Lastly, since petitioner did not prove the amount of the net operating loss deduction claimed by it for Federal tax purposes for either 1981 or 1982, the Administrative Law Judge held that petitioner is not entitled to the deduction for New York State purposes.

Petitioner's notice of exception to the Administrative Law Judge's determination states the following as its grounds of disagreement:

"Re-examination of the disallowed deductions, eg., checks issued for Legal & Professional Fees were disallowed giving the reason that those were personal. No personal checks were issued. All checks were business checks. This is for year 1981. Re-examination of all disallowed deductions for both years 1981 & 1982 is taken as exception.

"Items of substantiating documentation for 1982 were not presented because I had to go to work at 1PM. I was not informed that the session will last the whole day. In that case I would have taken off from my work.

"Disagrees for the losses to be carried forward & back to cancel the additional taxes. There were no Federal taxes due for those years but those losses were documented in State Franchise tax forms for all the years in question.

"Takes exception as to the proof of dissolution of corporation. Copy of the letter issued from the Headoffice at Albany, clearly explains that the corporation is dissolved by Proclamation if taxes are not filed for 3 years in a row."

The Division agrees with the determination of the Administrative Law Judge and relies upon the record of the proceedings and documentation.

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 said determination.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that:

1. The exception of Fazal Ahmad, P.C. is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Fazal Ahmad, P.C. is denied; and
4. The notices of deficiency dated August 28, 1985, reduced per a Conciliation Order issued on November 23, 1988, and further modified by the determination of the Administrative Law Judge dated February 14, 1991, are sustained.

DATED: Troy, New York
August 8, 1991

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

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

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