

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

JACQUI BUDER

DECISION

for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the Years 1978 and 1979.

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Petitioner, Jacqui Buder, 25 90-35 Street, Astoria, New York 11103, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1978 and 1979 (File Nos. 37724 and 44354).

On October 23, 1985, petitioner waived her right to a hearing and requested the State Tax Commission to render a decision based on the entire record contained in the file, with all briefs to be submitted by October 8, 1986. After due consideration, the State Tax Commission hereby renders the following decision.

ISSUES

I. Whether the notices of deficiency were issued without any basis and for the **sole** purpose of extending the period of limitation on assessment.

II. Whether petitioner has substantiated that she was engaged in a trade or business during the years at issue.

III. Whether petitioner has substantiated the character and amount of business expenses claimed as deductions from gross income for the years at issue.

FINDINGS OF FACT

1. Petitioner, Jacqui Buder, filed New York State income tax returns and unincorporated business tax returns for 1978 and 1979.

2. Ms. Buder's tax returns were selected for examination along with those of approximately 100 other individuals because her return had been prepared by a particular accountant. An investigation had disclosed that this accountant had consistently prepared returns on which an individual with wage or salary income shown on wage or tax statements had reported this income as business receipts on Federal Schedule C. Department of Taxation and Finance auditors were directed to review the returns and to disallow claimed business expense deductions if the taxpayer appeared to be an employee receiving wage or salary income reported on wage and tax statements.

3. Ms. Buder's 1978 State income tax return lists her occupation as "Author Indexing Service". Ms. Buder reported total income of \$14,285.00, consisting of business income of \$14,221.00 and interest income of \$64.00.

- (a) On an attached Federal Schedule C, Ms. Buder reported income from "assignments" of \$18,429.00 and income from consultantships of \$250.00 for a total income of \$18,679.00. The Schedule C also shows the following expenses:

Magazines, newspapers, etc.	\$ 298.00
Accounting	65.00
Office maintenance	600.00
Telephone	377.00
Office supplies and equipment	338.00
Cassette recorder, tapes for note taking	103.00
Filing, shelves, storage	237.00
Travel	278.00
Hospitality	682.00
Interest	299.00
Messengers	225.00
Office decor	582.00
Drama & other events	281.00
Attending industry functions	93.00
Total	\$4,458.00

The \$4,458.00 in total expenses deducted from total revenues of \$18,679.00 resulted in the business income reported.

- (b) A wage and tax statement attached to the return shows "wages, tips, other compensation" to **Ms.** Buder of \$18,428.87 from Marcel Dekker, Inc. of New York City. The statement is stamped with an arrow pointing to the compensation figure and bearing the legend "Included in Schedule C".
- (c) **Ms.** Buder claimed the standard deduction and claimed no miscellaneous or other itemized deductions.
- (d) The unincorporated business tax return shows total income from business before New York modifications of \$14,221.00 (also noted as "wages subject to FICA tax included in schedule C") less subtractions of \$18,429.00 resulting in a net **loss** of \$4,208.00. Accordingly, no unincorporated business tax was shown as due.

4. On March 24, 1982, the Audit Division issued to **Ms.** Buder a Statement of Audit Changes for 1978 asserting additional State and City personal income tax of \$505.44 on a recomputed New York taxable income of \$15,693.00 calculated as follows:

Total income reported on return	\$14,285.00
Expense disallowed	<u>4,458.00</u>
Total corrected New York taxable income	18,743.00
Standard deduction	<u>2,400.00</u>
Balance	16,343.00
Exemptions	<u>650.00</u>
New York taxable income	\$15,693.00

5. On April 14, 1982, the Audit Division issued a Notice of Deficiency for 1978 to **Ms.** Buder, asserting additional personal income tax due of \$505.44 plus interest. No penalties were imposed.

6. The 1979 income tax return lists **Ms.** Buder's occupation as "Author Indexing Service". **Ms.** Buder reported total income of \$16,723.00, consisting of business income of \$16,710.00 and interest income of \$13.00.

- (a) On the attached Federal Schedule C, **Ms.** Buder reported income from "assignments" of \$21,510.00 and income from "consultantships" of \$3,165.00 for a total of \$24,675.00. The Schedule C shows the following expenses:

Magazines, newspapers, etc.	\$ 397.00
Accounting	100.00
Office maintenance	600.00
Telephone	480.00
Office supplies and equipment	392.00
Cassette recorder, tapes for note taking	242.00
Filing, shelves, storage	471.00
Travel	843.00
Hospitality	981.00
Interest	302.00
Messengers	493.00
Office decor	57.00
Drama & other events	789.00
Attending industry functions & books	876.00
Telephone outside	429.00
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Total	\$7,965.00 <sup>1</sup>

The \$7,965.00 in expenses were subtracted from total income of \$24,675.00, resulting in the net business income of \$16,710.00 reported.

- (b) A wage and tax statement attached to the return shows income to ~~Ms.~~ Buder from "wages, tips, other compensation" in the amount of \$21,510.28 from Marcel Dekker, Inc. Again, the statement was stamped with an arrow pointing to the compensation figure and bearing the legend "Included in Schedule C".
- (c) Ms. Buder claimed the standard deduction and did not claim any miscellaneous or other itemized deductions.
- (d) The unincorporated business tax return shows total income from business of \$16,710.00 less subtractions of \$21,510.00 for a total loss from business of \$4,800.00. The form is stamped with an arrow pointing to the figure subtracted and bearing the legend "FICA Wages included in Schedule C". As Ms. Buder reported no taxable business income, no unincorporated business tax was shown as due.

7. On or about December 27, 1982, Ms. Buder was sent a letter by the Audit Division which requested that she provide clarifying information regarding the claimed Schedule C expenses. Ms. Buder did not respond to that letter, nor

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1 The correct total is \$7,452.00.

to a later request that she execute a consent to extend the statutory period of limitation for assessment of income taxes due for the year 1979.

8. On March 21, 1983, the Audit Division issued to Ms. Buder a Statement of Audit Changes containing this explanation: "Since you failed to reply to our letter dated December 27, 1982 and since you failed to provide the waiver requested in our letter dated January 4, 1983 adjustments to income are made." Additional State and City personal income tax of \$1,114.87 was computed on taxable income of \$21,588.00 calculated as follows:

Total income	\$24,688.00
Standard deduction	2,400.00
Balance	<u>\$22,288.00</u>
Personal exemption	700.00
Taxable income	<u>\$21,588.00</u>

9. On April 8, 1983, the Audit Division issued a Notice of Deficiency to Ms. Buder for the year 1979, asserting additional tax due of \$1,114.87 plus interest. No penalties were imposed.

10. Ms. Buder submitted a significant amount of documentation:

- (a) Payment forms from Marcel Dekker, Inc. to Ms. Buder indicate that she received total payments of \$1,600.00 in 1978 and \$3,165.00 in 1979 for work done on an author index. Two letters from Ms. Buder's employer to the Internal Revenue Service, both dated October 20, 1980, state that those amounts were paid to Ms. Buder as an independent contractor. Both letters state:

"The Company did not reimburse Ms. Buder for any expenses relating to Author Indexing and other services...

All work done by Ms. Buder as an independent contractor was not performed in our facilities and required the use of her office at home which was not reimbursed, [sic] and contains special equipment which we provided."

Each letter shows an allocation of W2 income:

	<u>1978</u>	<u>1979</u>
Base salary	\$15,876.94	\$17,740.47
Author indexing, paste-up and correction, page makeup	1,600.00	3,165.00
Productivity bonus	<u>951.93</u>	<u>604.81</u>
Total W-2	\$18,428.87	\$21,510.28

- (b) Ledger forms for each month in 1978 and 1979 show a daily breakdown of expenditures by category of expense. Cancelled checks show payments to New York Telephone, Consolidated Edison and an individual who was apparently Ms. Buder's landlord. There is one cancelled check made out to People.
- (c) Other forms of proof included: credit card statements, copies of journals published by Ms. Buder's employer and daily diaries for each year under consideration showing expenditures for a variety of items including: plants, file cards, cabs, an umbrella tree, a blackboard and oil paintings. There was no evidence to establish that these expenditures were other than personal in nature.

11. **Ms** Buder contends:

- (a) That the notices of deficiency were issued on an arbitrary and capricious basis just prior to the expiration of the period of limitations on assessment, thus depriving her of the opportunity to present substantiation for the claimed deductions;
- (b) that she is one of a large group of taxpayers who were selected for special scrutiny because their returns had been prepared by the same tax preparer; and
- (c) that where a taxpayer does not have cancelled checks or other receipts for certain expenses, the Department of Taxation and Finance should allow a reasonable estimate of expenses.

CONCLUSIONS OF LAW

A. That the notices of deficiency were properly issued and were not arbitrary or capricious. Ms. Buder submitted wage and tax statements showing income as an employee, yet she reported no income from wages, salaries, tips and other compensation. In addition, she submitted Federal Schedules C reporting her employee income as business income. These returns were patently erroneous, and the Audit Division was justified in making a determination of tax due based

on adjustments to correct inconsistencies apparent on the face of the returns. Each Notice of Deficiency was preceded by a Statement of Audit Changes fully informing **Ms.** Buder of the basis for the assessment and affording her the opportunity to file amended returns which she did not do.

B. That the fact that **Ms.** Buder's returns were selected for examination because of certain practices of her accountant is irrelevant. Her liability rests solely upon the facts adduced herein.

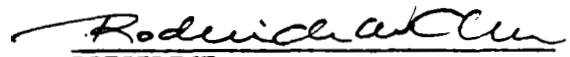
C. That **Ms.** Buder has not sustained her burden of proof (Tax Law § 689[e]; Administrative Code § T46-189.0[e]) to show (i) that she was engaged in a trade or business other than as an employee; significantly, she produced no proof of income from any source other than her employer and no proof of any independent business activity; (ii) that the expenses in question were deductible employee business expenses under Internal Revenue Code § 62(2); and (iii) that the expenses in question were ordinary and necessary business expenses under Internal Revenue Code § 162(a).

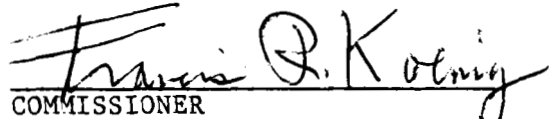
D. That the petition of Jacqui Buder is denied, and the notices of deficiency issued on April 14, 1982 and April 8, 1983 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER