

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID J. BAKISH

DECISION

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

Petitioner, David J. Bakish, 415 West 57th Street, New York, New York
10019, filed a petition for redetermination of a deficiency or for refund of
New York State personal income tax under Article 22 of the Tax Law and New York
City personal income tax under Chapter 46, Title T of the Administrative Code
of the City of New York for the years 1978 and 1979 (File Nos. 37746 and
43006).

On October 23, 1985, petitioner advised the State Tax Commission that he
desired to waive a hearing and to submit the case to the State Tax Commission
based upon the entire record contained in the file, with the submission of
additional evidence by October 8, 1986. After due consideration **of** said
record, the State Tax Commission 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 the petitioner has substantiated that he was engaged in a
trade or business during the years at issue.

III. Whether the 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, David J. Bakish, filed New York State income tax resident returns for the years 1978 and 1979.

(a) The 1978 income tax return listed petitioner's occupation as "Writer/Lecturer" and reported \$9,397.00 in total income consisting of \$35.00 in dividends, \$8,162.00 in business income and other income of \$1,200.00.

(i) A copy of the Federal Schedule C attached showed "Revenues" of \$19,048.00, of which \$18,798.00 was reported as arising from lecturing and \$250.00 from royalties. The Federal Schedule C reported the following expenses:

Studio Allocation (\$150 x 12 mos.)	\$ 1,800
Hospitality During Sessions	1,037
Researching meetings	3,271
Stationery, Supplies, Paper	298
Postage	65
Typing Expense	237
Books	992
Interest Exp. Bank Loan	122
Interest Exp. (Visa & Mastercharge)	111
Accounting	110
Dues	348
Repairs to Tape Recorder	23
Telephone	240
Magazines, Newspapers	293
Transportation (6,000 mi. @ \$.17	1,020
Research Travel - Boston, Wash. DC, New Haven, Phila.	639
Records, Tapes, Cassettes	213
Depreciation Typewriter & Recorder	<u>67</u>
Total	<u>\$10,886</u>

The \$10,886.00 in total expenses deducted from revenues of \$19,048.00 resulted in the \$8,162.00 net business income reported.

(ii) The wage and tax statement attached to the return showed \$18,797.73 in "Wages, tips and other compensation" from the City of New York Board of Higher Education. The statement was stamped with an arrow pointing to the \$18,797.73 figure with the legend "Included in Schedule C".

(iii) The unincorporated business tax return reported the following: net profit and total income from business before New York modifications was \$8,162.00; from this amount was subtracted \$18,798.00 resulting in a total (and net) loss from business of \$10,636.00.

(b) The 1979 return listed petitioner's occupation as a "Writer/Lecturer" and reported \$14,687.00 in total income consisting of \$140.00 in interest income and \$14,547.00 in business income.

(i) The Federal Schedule C showed income of \$25,640.00 as follows:

Lecturing	\$24,000.00
Research Foundation Liberal Arts Studies Plan	840.00
Faulkner	400.00
Report & Seminars Fee	350.00
R R Bowker Co.	50.00
"Richard Wright" Royalties	
"Afro-American Fiction 1853-1976 Royalties"	
"Jimmy Durante Biography" Ragtime, Vaudeville, Movies, etc.	
	<u>\$25,640.00</u>

The Federal Schedule C also listed the following expenses:

Studio Allocations	\$ 1,800.00
Hospitality During Writing Sessions	1,148.00
Research Meetings	732.00
Stationery, Supplies, Paper	292.00
Postage	83.00
Typing Expense	
Books & Printed Materials	1,174.00
Interest on Bank Loan	- 81.00
Interest on Credit Cards	48.00
Accounting	125.00
Dues	425.00
Telephone	240.00
Magazines, Newspapers	309.00
Transportation (6,850 @ \$.185 mi.)	1,267.00

Depreciation - Typewriter & Recorder	67.00
Records, Tapes, Cassettes	1,370.00
Doctoral Committee Expense	1,015.00
Photocopying	211.00
Bucknell University Project	706.00
Total	<u>\$11,093.00</u>

The \$11,093.00 in total expenses deducted from revenues of \$25,640.00 resulted in the \$14,547.00 net business income reported.

(ii) The wage and tax statement attached to the return showed \$23,999.57 in "Wages, tips, other compensation" from the City of New York Board of Higher Education. Like the 1978 statement, a stamped arrow with the legend "Included in Schedule C" pointed to said compensation.

(iii) The New York State Unincorporated Business Tax Return for 1979 reported a net profit and total income from business before modifications of \$14,547 .00. . This amount was reduced by subtractions of \$24,840 .00, resulting in a net loss from business of \$10,293.00.

(c) For each of the years at issue, petitioner claimed the standard deduction and did not claim any miscellaneous or other itemized deductions.

2. Petitioner filed U.S. individual income tax returns for the years 1978 and 1979. On the return for 1978, petitioner claimed an itemized deduction of \$2,626 .00, which included a deduction for state and local income taxes of \$1,262.00. Petitioner did not itemize deductions for the year 1979.

3. Petitioner's tax returns were selected for examination along with those of approximately 100 other individuals on the basis that the returns had been prepared by a particular accountant. An investigation had disclosed that said accountant had consistently prepared returns on which an individual with wage or salary income shown on wage and tax statements had reported said 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. Petitioner's claimed Schedule C deductions were disallowed on that basis.

4. (a) On April 14, 1982, the Audit Division issued a Notice of Deficiency to petitioner which asserted a deficiency of personal income tax for the year 1978 in the amount of \$1,083.14, plus interest of \$312.46, for a balance due of \$1,395.60. The Statement of Audit Changes, which had previously been issued, explained "that expenses claimed in Schedule C are not ordinary and necessary in the production of income as an employee."

(b) On April 8, 1983, the Audit Division issued a Notice of Deficiency to petitioner asserting a deficiency of personal income tax for the year 1979 in the amount of \$1,543.50, plus interest of \$513.06, for a balance due of \$2,056.56. The Statement of Audit Changes provided the same explanation as that which pertained to the previous Notice of Deficiency.

(c) For both years, petitioner was allowed the standard deduction and household credit. No penalties were imposed.

5. Upon the submission, petitioner presented documentary evidence which showed the following:

(a) Petitioner made efforts during the years in issue to have articles which he had written published. He was also active in writing books.

(b) Petitioner submitted documentary evidence pertaining to a portion of the expenses claimed. However, he did not submit any evidence to show to what extent said expenses were ordinary business expenses.

6. Petitioner 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 petitioner of the opportunity to present substantiation for the claimed deductions;

(b) that petitioner *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 petitioner does not have cancelled checks or other receipts for certain expenses, the Department of Taxation and Finance should allow petitioner a reasonable estimate of such expenses.

CONCLUSIONS OF LAW

A. That the notices of deficiency were properly issued and were not arbitrary or capricious. The returns were patently erroneous and the Audit Division was justified in disallowing the claimed Schedule C business expenses.

B. That the fact that petitioner's returns were selected for examination because of certain practices of his accountant is irrelevant. Petitioner's liability depends solely on the facts adduced herein.

C. That petitioner has failed to sustain his burden of proof pursuant to Tax Law § 689(e) and Administrative Code § T46-189.0(e) to show what portion of the business expenses claimed were deductible ordinary and necessary business expenses of being a writer as opposed to nondeductible personal expenses. Accordingly, the adjustments to said expenses are sustained.

D. That petitioner has not established that he has satisfied the criteria of a deduction for an office in the home (Internal Revenue Code § 280A).

E. That while petitioner may have been able to claim certain itemized deductions for the year 1978, such as interest expense, accounting fees and union dues, the amount of these deductions when totalled do not exceed the

standard deduction. Therefore, it is unnecessary to determine whether petitioner is entitled to any itemized deductions for the year 1978.

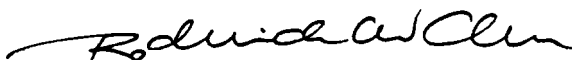
F. That since petitioner did not itemize his deductions on his Federal income tax return for 1979, he is not entitled to itemize deductions for New York State and New York City personal income tax purposes (Tax Law § 615[a]; Administrative Code § T 46-115.0).

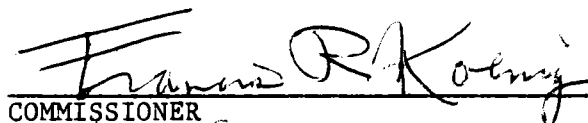
G. That the petition of David J. Bakish is denied and the notices of deficiency issued April 14, 1982 and April 8, 1983 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 18 1987


PRESIDENT


COMMISSIONER


COMMISSIONER