

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions

of

JACEK GNIAZDOWSKI

DECISION

for Redetermination of Deficiencies or for  
Refunds 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.

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Petitioner, Jacek Gniazdowski, 144-24 37th Avenue, Flushing, New York 11354, filed petitions for redetermination of deficiencies or for refunds 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. 38591 and 45358).

On October 23, 1985, petitioner waived his right to a hearing and requested the State Tax Commission to render a decision based upon 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 he 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, Jacek Gniazdowski, filed New York State income tax resident returns and unincorporated business tax returns for the years 1978 and 1979.

a. The 1978 income tax return listed petitioner's occupation as "printer", and reported total income of \$16,351.00, consisting of \$15,430.00 in business income, \$86.00 in interest income and \$835.00 recognized from the sale or exchange of capital assets.

(i) The copy of Federal Schedule C attached to the return showed "income" of \$18,846.00, consisting of "institutional" income of \$18,596.00 and "other" income of \$250.00. The following expenses were listed beneath said income:

magazines, newspapers, etc.	\$ 293.00
telephone-inside	240.00
tools	233.00
accounting	100.00
telephone-outside	382.00
safety shoes	183.00
prospecting, promotion	842.00
travel (4,370 mi. @ 17¢ per mi.)	743.00
cleansing solutions	122.00
dues and memberships	278.00
Total Expenses	<u>\$3,416.00</u>

The \$3,416.00 in expenses deducted from income of \$18,846.00 resulted in \$15,430.00 net business income reported.

(ii) The wage and tax statement attached to the return showed \$18,595.97 in "wages, tips and other compensation" from Pan American World Airways, Inc. The statement was stamped with an arrow pointing to the

amount in the box entitled "wages, tips and other compensation", with the legend "included in Schedule C".

(iii) The State unincorporated business tax return for 1978 showed \$15,430.00 in net profit less \$18,596.00 in subtractions, resulting in a loss from business of \$3,166.00. Accordingly, no unincorporated business tax was shown as due.

b. The 1979 return listed petitioner's occupation as "printer" and petitioner's wife's occupation as "housewife", and reported \$16,896.00 in total income, consisting of \$16,388.00 in business income, \$52.00 in interest and \$456.00 in capital gain.

(i) The Federal Schedule C attached to said return showed income of \$20,576.00, consisting of "institutional" income of \$20,126.00 and "other" income of \$450.00. The following expenses were listed beneath said income:

magazines, newspapers, etc.	\$ 305.00
telephone-inside (\$30. x 12)	360.00
tools	428.00
accounting	100.00
telephone-outside	367.00
safety shoes	231.00
prospecting, promotion	983.00
travel (4,810 mi. @ 18½¢ per mi.)	889.00
cleansing, solutions	231.00
dues and memberships	294.00
Total Expenses	<u>\$4,188.00</u>

The \$4,188.00 in total expenses deducted from income of \$20,576.00 resulted in the \$16,388.00 net business income reported.

(ii) The wage and tax statement attached to the return showed "wages, tips, other compensation" from Pan American World Airways, Inc. of \$20,126.20. On the wage and tax statement there appears a stamped arrow

with the legend "included in Schedule C" pointing to the compensation listed under "wages, tips, other compensation".

(iii) The State unincorporated business tax return for 1979 showed net profit from business of \$16,388.00 less \$20,126.00 in subtractions, resulting in a **loss** from business of \$3,738.00. Accordingly, no unincorporated business tax was shown as due.

c. For the year 1978, petitioner chose the standard deduction and in 1979 petitioner itemized his deductions as follows:

<u>1979</u>	
medical and dental expenses	\$ 487.00
taxes	2,024.00
interest	2,239.00
contributions	341.00
miscellaneous	<u>284.00</u>
total Federal itemized deductions	<u>\$5,375.00</u>
income tax included in Federal item. ded.	<u>1,102.00</u>
Net New York Itemized Deductions	<u>\$4,273 .00</u>

2. Petitioner's tax returns were selected for examination along with those of approximately 100 other individuals on the basis that said 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.

3. a. On April 7, 1982, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1978, asserting additional personal income

tax due of \$419.47. The following explanation was given for said additional tax:

"Since business income which you report equals the wages which you received from Pan American World Airways, Inc., the schedule C expenses are being disallowed as not ordinary and necessary in the production of income as an employee."

On May 13, 1982, the 'Audit Division issued a Notice of Deficiency to petitioner for additional tax due of \$419.47, consisting of additional New York State personal income tax due of \$326.37 and additional New York City personal income tax due of \$93.10, together with interest of \$125.52, for a total amount due of \$544.99.

b. On January 17, 1983, the Audit Division issued a Statement of Audit Changes to petitioner for tax year 1979, asserting additional tax due of \$462.92. The explanation for said additional tax was as follows:

"As a salaried employee, you are not a business entity and therefore are not entitled to claim Schedule C deductions as these expenses are not ordinary and necessary for the production of income as an employee."

On April 8, 1983, the Audit Division issued a Notice of Deficiency to petitioner stating additional tax due of \$462.92 and interest of \$153.85, for a total amount due of \$616.77.

4. Petitioner submitted substantial documentary evidence:

a. Petitioner offered a copy of the 1978 U.S. Individual Income Tax Return, Form 1040 with Schedules C, D and SE, receipts for business equipment, receipts for magazines and newspapers, telephone bills for 1978, blanksheets with the legends "tools", "accounting", and "outside-telephone", bills for safety shoes, receipts from the American Heart Association and By-Lines Press which the petitioner feels are representative of self-prospecting and promotional expenses,

automobile repair bills, a receipt from a dry cleaner, and a hand-written note of 1.575% of gross salary as representative of dues and memberships.

b. For the year 1979, petitioner submitted a complete copy of his Form 1040 and attached Schedules, a handwritten note concerning commissions on outside printing jobs, a handwritten note with regard to inside-telephone expenses, rent-a-car receipts, newspaper and magazine expenses in regard to job seeking, a handwritten note as to expenses incurred with regard to tax return preparation, a handwritten note with regard to outside-telephone expenses, safety shoes, cleansing solutions, additional job-seeking expenses, and a receipt for union dues from the International Brotherhood of Teamsters. Additionally, petitioner submitted newspaper billings, telephone **bills** for 1979, receipts for tools and shoes purchased for work, and additional handwritten notes with regard to expenses such as safety shoes, promotional expense, cleansing solutions, dues and memberships. Also included in the package was an affidavit in which petitioner claims he **is** entitled to deduct the above expenses as ordinary and necessary expenses incurred in the pursuit **of** his activity as a printer.

c. **All** of the documentary evidence was submitted to substantiate the expenses listed on petitioner's Schedule C for the years 1978 and 1979.

d. In addition to the forms filed by petitioner which have been mentioned previously, petitioner filed Form NYC 202, the New York City unincorporated business tax return, for 1978. The 1978 return showed net profit of \$15,430.00, less New York City modifications **of** \$18,596.00, leaving a **loss** from business **of** \$3,166.00. Accordingly, petitioner did not incur any additional tax liability for New York City unincorporated business income for 1978. There was no NYC 202 filed for the year 1979.

e. Petitioner's **1978** New York State Income Tax Resident Return was filed with the Department of Taxation and Finance on May **28, 1979**.

5. Petitioner contends 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. Petitioner also contends that the deficiencies were arbitrary and capricious because he was never audited and that the deficiencies were based upon the erroneous assumption that the expenses claimed were not ordinary and necessary. Petitioner asserts that the expenses were deductible as ordinary and necessary business expenses under section **162** of the Internal Revenue Code and/or deductible for the production or maintenance of income under section **212** of the Internal Revenue Code. Finally, petitioner contends that regardless of the classifications of the different Internal Revenue Code sections, his taxable income is unchanged.

CONCLUSIONS OF LAW

A. That the notices of deficiency were properly issued and are not arbitrary or capricious. The returns were patently erroneous and the Audit Division was justified in disallowing the Schedule C business deductions. Each notice of deficiency was preceded by a statement of audit changes and petitioner had an opportunity to file amended returns claiming employee business expenses as adjustments on Federal Form **2106**, or as itemized miscellaneous deductions, but he did not do so.

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 not sustained his burden of proof under section 689(e) of the Tax Law to show that he was engaged in a trade or business other than as an employee. Thus, expenses claimed on Schedule C may not be deducted under section 62(1) of the Internal Revenue Code.

D. That while it would appear that petitioner may have been entitled to deduct employee business expenses under sections 62(2) or 63(f) of the Internal Revenue Code if he had filed a form 2106, or itemized his deductions and claimed such expenses as miscellaneous deductions, petitioner nevertheless, failed to sustain his burden of proof under Tax Law § 689(e) to show the character or, in many cases, the amount of the claimed business expenses.

E. That the petitions of Jacek Gniazdowski are denied and the notices of deficiency issued on May 13, 1982 and April 8, 1983 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 29 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER