

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

EUGENE OKTAN

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DECISION

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

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Petitioner, Eugene Oktan, 505 Graham Avenue, Brooklyn, New York 11222, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the year 1979 (File No. 45230).

On October 23, 1985, petitioner advised the State Tax Commission that he desired to waive his right to a hearing and to submit his case for decision based upon the existing record contained in the file, together with the submission of additional evidence by October 8, 1986. After due consideration, the State Tax Commission hereby renders the following decision.

#### ISSUES

I. Whether the Notice of Deficiency issued to petitioner by the Audit Division was 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 year 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. Eugene Oktan (hereinafter "petitioner") filed a New York State Income Tax Resident Return for the year 1979. On his return, petitioner listed his occupation as "sales representative" and reported \$15,210.00 in total income, consisting of \$133.00 in interest income, \$17,337.00 in business income and losses from rents and royalties of \$2,260.00.

(a) A copy of the Federal Schedule C attached to the return showed income of \$24,475.00, consisting of \$23,425.00 in "commissions" and \$1,050.00 in "miscellaneous". The Federal Schedule C reported the following expenses:

Travel (13,480 miles @ 181½¢	\$2,494
Parking & Tolls	587
Newspapers, Magazines, etc.	391
Sales Expenses, Meetings	1,456
Promotional Expense	1,072
Accounting	150
Hospitality	646
Supplies, Briefcase	188
Cassettes, Recording Supplies (Note Taking)	<u>154</u>
Total	\$7,138

The \$7,138.00 in expenses deducted from revenues of \$24,475.00 resulted in the \$17,337.00 net business income reported.

(b) The wage and tax statement attached to the return showed \$23,425.00 in "wages, tips, other compensation" from Apex Fabricators, Inc. of Brooklyn, New York. The statement is itemized with an arrow pointing to the \$23,425.00 figure with the legend "Included in Schedule C". Federal, State, local and FICA taxes were withheld from the \$23,425.00 paid to petitioner by Apex Fabricators, Inc.

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

2. Petitioner's tax return was selected for examination along with those of approximately **100** other individuals on the basis that their 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. **On** February 8, 1983, the Audit Division issued a Statement **of** Audit Changes to petitioner for 1979 in the amount of \$891.36 additional New York State and New **York** City personal income tax due, plus interest, for a total due of \$1,173.94. The Statement of Audit Changes explained that "[a]s 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 to petitioner a Notice of Deficiency **in** the amount of \$891.36, plus interest of \$296.28, for a total amount due of \$1,187.64.

4. Upon the submission of his case, petitioner submitted an affidavit **on** which he contends that a Federal tax audit allowed virtually the entire Schedule C except for some expenses for tips and hospitality. No evidence of a Federal audit was submitted, other than a copy **of** petitioner's Federal return **for** 1979. Petitioner further **contends that he has substantiation for**

some of the Schedule C expenses, but no such substantiation was submitted with his affidavit.

CONCLUSIONS OF LAW

A. That the Notice of Deficiency was properly issued and was not arbitrary or capricious. Petitioner's return was patently erroneous and the Audit Division was justified in disallowing the claimed Schedule C business deductions.

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

C. That petitioner has not sustained his burden of proof under section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York to show that he was engaged in a trade or business other than as an employee. Therefore, expenses claimed on Schedule C may not be deducted under section 62(1) of the Internal Revenue Code.

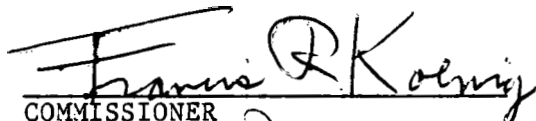
D. That the petition of Eugene Oktan is denied and the Notice of Deficiency issued April 8, 1983 is sustained.

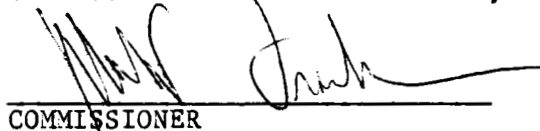
DATED: Albany, New York

STATE TAX COMMISSION

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PRESIDENT

  
COMMISSIONER

  
COMMISSIONER