

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

WILLIAM JONES

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Years 1982 and 1983.

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Petitioner<sup>1</sup>, William Jones, 107 Thorndale Road, Slingerlands, New York 12159, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1982 and 1983 (Pile No. 63016).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission; W.A. Harriman State Office Campus, Albany, New York on January 13, 1987 at 1:15 P.M. with all documents to be submitted by February 18, 1987. Petitioners appeared by Mosca & Carmody (Joseph M. Mosca, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

#### ISSUE

Whether petitioner has substantiated entitlement to a greater automobile business expense than the amount allowed by the Audit Division.

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1 Although the hearing was called in the name of William and Adrienne Jones, the Audit Division asserted a deficiency of personal income tax only against William Jones. Hence, all references to petitioner are references solely to William Jones.

FINDINGS OF FACT

1. Petitioner, William Jones, and his wife, Adrienne Jones, filed a New York State Resident Income Tax Return for each of the years 1982 and 1983. On each return, they selected a filing status of "Married filing separately on one return".

2. On June 26, 1985, the Audit Division issued a Notice of Deficiency to petitioner, William Jones, asserting a deficiency of personal income tax in the amount of \$1,434.70 plus interest of \$270.33 for a balance due of \$1,705.03 for the years 1982 and 1983. To the extent at issue herein, the asserted deficiency of personal income tax was premised upon a reduction of the depreciation expense which petitioner had claimed on his automobile. The reduction in the permitted business expense arose from the Audit Division's allowance of fifteen percent business use of petitioner's automobile as opposed to the seventy-five percent business use of the automobile which had been claimed.

3. During the years in issue, petitioner engaged in the practice of dentistry. He also invested in various real estate projects.

4. Petitioner did not appear at the hearing to offer testimony on his own behalf. However, his representative maintained that petitioner was engaged in a number of dealings involving real estate and that these activities required a great deal of use, by petitioner, of his car. Petitioner's representative argued that, among other trips, petitioner traveled to Lake George to examine property, traveled to a restaurant in which he owned an interest and traveled to Glenmont, New York wherein he owned apartments. On the basis of the foregoing, petitioner's representative maintained that permitting a fifteen percent business use of his automobile would be inequitable.

5. Petitioner's personal income tax returns were examined by the Internal Revenue Service for the years 1980 and 1983. These examinations did not result in any change in the amount of automobile expenses claimed. On the basis of the foregoing, petitioner submits that no adjustment to the claimed automobile expense is warranted.

6. Petitioner did not present any records to substantiate the business usage of his automobile during the years in issue.

CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law imposes upon petitioner the burden of refuting the Audit Division's disallowance and establishing that he *is* properly entitled to the automobile expenses claimed as deductible business expenses on each of the subject returns.

B. That an individual claiming travel expense is expected to maintain records or other proof substantiating the amount *of* the expense, time, place and business purpose of each trip (I.R.C. § 274; Treas. Reg. § 1.274-5[b][2]). That since petitioner did not present any vehicle usage logs or other evidence substantiating the foregoing items, he has not sustained his burden of proving entitlement in full to the expenses claimed on the returns in question (**see** Matter of Juan Laurilla, State Tax Commission, November 14, 1986).


C. That the fact that the Internal Revenue Service did not question the automobile expense claimed does not preclude an independent investigation or audit in regard thereto.

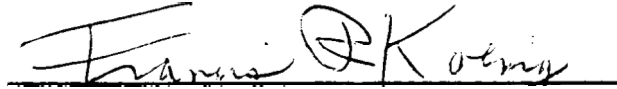
D. That the petition of William Jones is denied and the Notice of Deficiency, dated June 26, 1985, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

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PRESIDENT

  
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