

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jacek Gniazdowski : AFFIDAVIT OF MAILING
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. :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 29th day of May, 1987, he/she served the within notice of decision by certified mail upon Jacek Gniazdowski the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

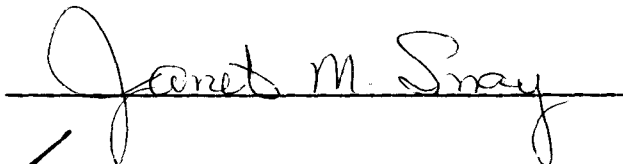
Jacek Gniazdowski
144-24 37th Avenue
Flushing, NY 11354

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
29th day of May, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

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of

Jacek Gniazdowski

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ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 29th day of May, 1987, he served the within notice of decision by certified mail upon Louis F. Brush, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis F. Brush
101 Front Street
Mineola, NY 11501

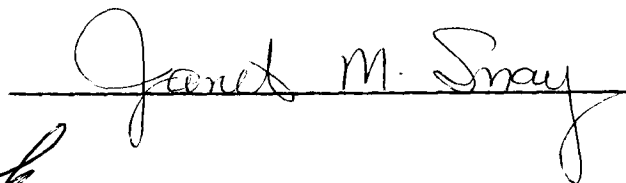
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
29th day of May, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 29, 1987

Jacek Gniazdowski
144-24 37th Avenue
Flushing, NY 11354

Dear Mr. Gniazdowski:

Please take notice of the decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 1312 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Louis F. Brush
101 Front Street
Mineola, NY 11501

STATE TAX COMMISSION

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.

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:

1979	
medical and dental expenses	\$ 487.00
taxes	2,024.00
interest	2,239.00
contributions	341.00
miscellaneous	284.00
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, blank sheets 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.

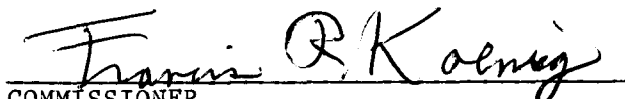
E. That the petitions of Jacek Gniazdowski are denied and the notices of deficiency issued on May 13, 1982 and April 8, 1983 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 29 1987


PRESIDENT


COMMISSIONER


COMMISSIONER