

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Edward Margolies : AFFIDAVIT OF MAILING
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 & 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 15th day of April, 1987, he/she served the within notice of Decision by certified mail upon Edward Margolies the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward Margolies
141 East 3rd St.
New York, NY 10009

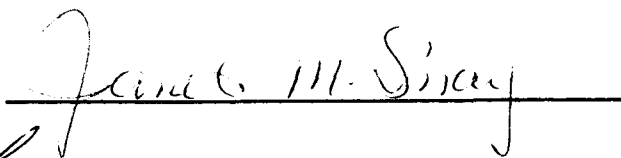
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
15th day of April, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Edward Margolies :

AFFIDAVIT OF MAILING

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 :
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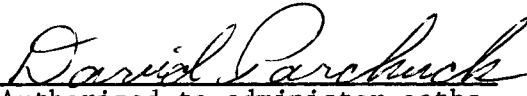
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 15th day of April, 1987, he served the within notice of Decision by certified mail upon Louis F. Brush, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

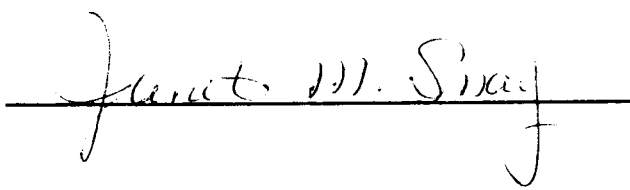
Louis F. Brush
101 Front Street
Mineola, NY 11501

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
15th day of April, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

April 15, 1987

Edward Margolies
141 East 3rd St.
New York, NY 10009

Dear Mr. Margolies:

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 OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD MARGOLIES

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.

Petitioner, Edward Margolies, 141 East 3rd Street, New York, New York 10009, filed a petition 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. 37756, 38100 and 41809).

On October 23, 1985, petitioner waived a hearing before the State Tax Commission and agreed to submit the matter for decision based on the Audit Division file, as well as a brief and additional documents to be submitted by October 8, 1986. After due consideration of the record, 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. (a) Petitioner, Edward Margolies, filed a New York State Income Tax Resident Return for 1978. His wife, Claire Margolies, filed separately on the same form. Petitioner's occupation was listed as "Writer/Lecturer".

(b) Petitioner reported business income of \$18,842.00. His wife reported wages of \$5,501.00 and "other income" of \$7,200.00.

(c) Petitioner filed a Schedule C, Federal Form 1040, for 1978, stating his main business activity to be "Writer/Lecturer". Revenues and expenses were reported as follows:

"Schedule C - Income From Business Or Profession - Writer/Lecturer"

Revenues - Lecturing	33833	
Publishing & Writing		
Gale Research		
Lippincott	1205	
U. of So. Ill. Press		
U. of Missouri		
		35038
Expenses -		
Dues & Subscriptions	341	
Newspapers, Magazines	298	
Books	416	
Attendance Cultural Events, Plays	893	
Postage	74	
Records, Cassettes, Tapes	417	
Meeting Expense & Research Conferences	2596	
Travel Re: Publishing (7 Titles)	1628	
Hospitality	812	
Alloc of Telephone	300	
Office Supplies & Expense	684	
Parking Courtesies	65	
Payments for Secretarial Services		
Claire Margolis [sic] (\$150 x 48 weeks)	7200*	
Typing Manuscripts	250	
Professional Staff Congress	222	
		16196
	Net Income	<u>\$18842</u>

* Reported as "Other Income" on Form 1040 P. 1, Line 20"

(d) A Wage and Tax Statement for 1978 was issued to petitioner Edward Margolies by The City of New York Board of Higher Education, reporting income of \$33,833.30 with the stamped legend "Included in Schedule C" and an arrow pointing to said amount. Federal, state and local income taxes and FICA were withheld.

(e) Petitioner itemized deductions on his Federal return and claimed \$211.00 in miscellaneous deductions.

2. (a) Petitioner and his wife, Claire Margolies, filed a joint New York State Income Tax Resident Return for 1979. Mr. Margolies' occupation was stated as "Writer/Lecturer", while his wife's occupation was stated as "Researcher/Secy".

(b) Mr. and Mrs. Margolies reported \$2,763.00 in wage or salary income, business income of \$10,501.00, a short-term capital gain of \$13,377.00 and a loss from "Partnerships, estates and trusts and small business corporations" of \$15,681.00.

(c) Petitioner filed a Schedule C, Federal Form 1040, for 1979, again stating his occupation as "Writer/Lecturer" and reporting the following revenues and expenses:

"Schedule C - Income From Business Or Profession - Writer/Lecturer"

Revenues - Lecturing:	CUNY	18,003.72	
	Sorbonne-Paris Fr.	15,336.17	
Writing & Publishing	Lippincott		
	U. of So. Ill. Press	300	
	Bereker		\$33,640
<hr/>			
Expenses -			
Qualified Cost of Living Differential -			
Three (3) People Living in France		6,400	
Travel - Airfare	1,503		
Lodging	3,112		
Meals	1,873		
Local Travel	642		
Travel To Venice	1,894		
Long Distance Calls	108	9,132	
		<hr/>	

Organizations, Dues	168
Newspapers, Magazines	316
Books	402
Attendance Cultural Events, Plays	917
Postage	81
Records, Cassettes, Tapes	444
Meeting Expenses & Research Conferences	2,686
Automobile 2,400 mi @ 18½¢	444
Hospitality	927
Telephone - Allocation	125
Office Supplies & Expenses	672
Payments for Secretarial Services	
Claire Margolies	--
Typing Manuscripts	275
Accounting	<u>150</u>

	<u>23,139</u>
Net Income	<u>\$10,501"</u>

(d) A Wage and Tax Statement for 1979 was issued to petitioner Edward Margolies by The City of New York Board of Higher Education, in the amount of \$18,208.22. It stated that he was a member of a pension plan. Federal, state and local taxes and FICA were withheld from the compensation. A Wage and Tax Statement was issued to Mrs. Margolies by the American Jewish Committee showing compensation of \$2,762.80.

(e) Petitioner and his wife itemized deductions on their Federal return and claimed \$147.00 as miscellaneous deductions.

(f) Petitioner Edward Margolies filed a New York State Unincorporated Business Tax Return for 1979 reporting \$10,501.00 in net profit, less \$18,004.00 in subtractions, for a net loss of \$7,503.00. No tax was shown as due. The legend "FICA wages included in Schedule C" was stamped on the return, with an arrow pointing to the subtractions.

3. 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.

4. On March 24, 1982, the Audit Division issued a Statement of Audit Changes to Edward and Claire Margolies for 1978, asserting an additional \$1,804.71 in New York State and New York City personal income taxes. The statement contained the following explanation:

"Business expenses of \$16,196.00 claimed on Federal Schedule C are disallowed since they are not considered ordinary and necessary in the production of income received as an employee.

Since business expenses are disallowed, the income of \$7,200.00 reported by the spouse is not subject to New York tax."

On April 14, 1982, the Audit Division issued two notices of deficiency to petitioner Edward Margolies for 1978, one for \$1,384.03, plus interest, with respect to New York State tax and the other for \$420.68, plus interest, with respect to New York City tax, for a total of \$1,804.71.

5. On February 14, 1983, the Audit Division issued a Statement of Audit Changes to petitioner, Edward Margolies, and his wife, Claire Margolies, for 1979, for an additional \$2,513.76 in New York State and New York City personal income taxes, with the following explanation:

"As a salaried employee, you are not a business entity and therefore are not entitled to claim Schedule C deduction [sic] 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 Edward Margolies for 1979, in the amount of \$2,513.76 in tax, plus interest.

6. Petitioner Edward Margolies was a college professor at the City University of New York during the years at issue. In 1979, he was appointed as a visiting professor at the Sorbonne in Paris, France, for one semester.

7. Petitioner also received income from writing and editing of \$1,205.00 in 1978 and \$300.00 in 1979.

8. Documentary evidence submitted by petitioner substantiated the following expenses:

	<u>1978</u>
Dues & Subscriptions	\$341.00
Typing	250.00
Professional Staff Congress	<u>222.00</u>
Total	\$813.00

	<u>1979</u>
Dues	\$168.00
Typing	275.00
Tax Preparation	<u>150.00</u>
Total	\$593.00

All other claimed expenses either appear to be personal in nature, or were not satisfactorily substantiated.

9. 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 part 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 Schedule C business income and expenses. 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 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 with the exception of the relatively small amounts of income from writing and editing noted in Finding of Fact "7", 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, the bulk of expenses claimed on Schedule C may not be deducted under section 62(1) of the Internal Revenue Code. Petitioner may, however, deduct \$250.00 for typing in 1978 and \$275.00 for typing in 1979.

D. That petitioner may deduct \$341.00 in dues and subscriptions and \$222.00 in dues for the Professional Staff Congress for 1978 and may also deduct \$168.00 in dues and \$150.00 for tax preparation for 1979. While it would appear that petitioner may have been entitled to deduct certain other employee business expenses under sections 62(2) or 63(f) of the Internal Revenue Code if he had filed Form 2106, or if he had claimed such expenses as miscellaneous itemized deductions, petitioner nevertheless failed to sustain his burden of

proof under section 689(e) of the Tax Law to show the character, or in many cases, the amount of the other claimed business expenses.

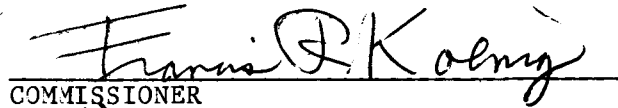
E. That the petition of Edward Margolies is granted to the extent indicated in Conclusions of Law "C" and "D"; that the Audit Division is directed to modify the notices of deficiency issued April 14, 1982 and April 8, 1983 accordingly; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1987


PRESIDENT


COMMISSIONER


COMMISSIONER