

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

ALFRED E. WILCOX

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1974.

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Petitioner, Alfred E. Wilcox, 573 Freeman Street, Corning, New York 14830, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 24932).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York, on June 17, 1986 at 1:15 P.M., with all documents to be submitted by July 1, 1986. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq, (Deborah J. Dwyer, Esq., of counsel).

#### ISSUES

I. Whether Petitioner was entitled to claim an exemption and child care deduction for his son.

II. Whether petitioner was able to substantiate the amount claimed for certain business and personal deductions.

#### FINDINGS OF FACT

1. Petitioner, Alfred E. Wilcox, timely filed a New York State Income Tax Resident Return for the year 1974. On this return, petitioner reported that he was a mason and claimed two exemptions, certain adjustments to income and various itemized deductions.

2. On April 4, 1978, the Audit Division issued a Notice of Deficiency to petitioner, Alfred E. Wilcox, asserting a deficiency of personal income tax for the year 1974 in the amount of \$264.24, plus interest of \$66.62, for a total amount due of \$330.86. The revised Statement of Audit Changes, which was issued on September 12, 1977, explained that the proposed deficiency of personal income tax was based upon the disallowance of a series of items which petitioner claimed on his New York State Income Tax Resident Return for the year 1974. The revised Statement of Audit Changes explained that items adjusted were as follows:

| Item            | Claimed             | <u>Allowed</u> | <u>Adjustment</u> |
|-----------------|---------------------|----------------|-------------------|
| Exemption       | \$ 650.00           | \$ -0-         | \$ 650.00         |
| Child Care      | 170.06 <sup>1</sup> | -0-            | 170.06            |
| Travel expenses | 1,468.65            | 129.16         | 1,339.49          |
| Contributions   | 318.00              | 104.00         | 214.00            |
| Equipment       | 374.94              | 258.85         | 116.09            |

3. The exemption and child care expenses were disallowed because petitioner did not have custody of his son. The travel expenses were allowed to the extent that petitioner was able to document travel out of the area of his home plus 200 miles for travel between different plants in Corning, New York for Corning Glass Works less reimbursement provided by his employer. The charitable contributions and equipment expenses were allowed to the extent that petitioner was able to furnish documentation substantiating these expenses.

4. During the year in issue, petitioner's son, Matthew, lived with petitioner from January 1974 through approximately the end of June 1974. On or about September 16, 1974, petitioner and his wife entered into a separation agreement which provided that petitioner's wife would be granted custody of

Matthew. The agreement also provided that petitioner was to pay his wife \$25.00 per week for the support of his child. Furthermore, the agreement provided that petitioner would have the right to claim the child as a dependent for income tax purposes.

5. On October 10, 1974, petitioner obtained a judgment of divorce from his wife. The divorce decree provided that the separation agreement would be incorporated but not merged in the divorce decree.

6. After the separation agreement was entered into, petitioner paid for his son's expenses plus \$25.00 per week. Petitioner paid more than \$600.00 during 1974 to support his son.

7. During the year in issue, petitioner was employed as a mason for Corning Glass Works. In this capacity, it was necessary for petitioner to travel from one plant site to another. It was the policy of Corning Glass Works to reimburse petitioner for out-of-town mileage in the United States at a rate of \$.12 per mile and to provide reimbursement for travel in Canada at a rate of \$.125 per mile. Mileage within Corning, New York was not reimbursed. At the hearing, petitioner presented a schedule of travel reimbursement from Corning Glass Works showing that petitioner was reimbursed during 1974 for a total of 3,438 miles resulting in a reimbursement of \$416.54. In contrast, petitioner reported business travel mileage of 12,140 and reimbursement of \$370.80 on his income tax return for 1974.

8. During the year in issue, petitioner was required to travel on behalf of his trade union. Petitioner considered this mileage deductible on his income tax return. The record is unclear whether petitioner's travel on behalf of his union accounts for the total of the additional mileage reported on the income tax return in excess of that reimbursed by the employer.

9. No evidence was presented as to whether petitioner received income from his activities on behalf of the union.

10. At the hearing, petitioner presented a sufficient number of invoices and cancelled checks to substantiate the amount petitioner claimed on his income tax return for equipment expenses.

11. At the hearing, petitioner presented a group of payroll statements to establish that he contributed \$.50 per week to a charitable organization through payroll deductions.

#### CONCLUSIONS OF LAW

A. That, during the year in issue, it was permissible for parents who have divorced or separated to agree that the noncustodial parent may claim an exemption for a dependent child (Treas. Reg. § 1.152-4[d][2]). Since such an agreement was entered into, the fact that petitioner did not have custody of his son did not preclude him from being entitled to claim his son as an exemption

B. That, with respect to the child care deduction during the year in issue, a child could be treated as a qualifying individual for a parent not having custody when the dependency exemption was released by the noncustodial parent (I.R.C. §151[e]; §§152, 214 [amended 1976]). Thus, the asserted ground for the denial of the deduction of expenses for household and dependent care services was erroneous as a matter of law. Consequently, the proposed adjustment eliminating the deduction for child care service is rejected.

C. That petitioner has failed to sustain his burden of proof of establishing that he is entitled to travel expenses in excess of those permitted by the Audit Division (Tax Law §689[e]). It is noted that petitioner has nor shown that travel expenses on behalf of his union were deductible as either related to a trade or business (I.R.C§162[a][2]) or expenses related to the production

of income (I.R.C. §212). However, in view of the typographical error noted in footnote "1", the adjustment of travel expenses should be reduced by \$6.00.

D. That petitioner has failed to sustain his burden of proof of establishing that the amount of the charitable contributions allowed by the Audit Division was unreasonable or improper (Tax Law §689[e]).


E. That petitioner has submitted sufficient documentary evidence in the form of invoices and cancelled checks to substantiate the amount claimed on his income tax return for equipment expenses. Thus, the proposed adjustment to petitioner's deduction for equipment expenses is rejected.

F. That the petition of Alfred E. Wilcox is granted to the extent of Conclusions of Law "A", "B", "C" and "E" and the Audit Division is directed to modify the Notice of Deficiency, issued April 4, 1978, accordingly; as modified, the Notice of Deficiency is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 20 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER