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STATE OF NEW YORK
STATE TAX COMMISSION

Income Tax Determination
Brex, David E. A-2

In the Matter of the Petition

of

DAVID E. BREX

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1964

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Janet Wright, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 3rd day of October, 1969, she served the within
Notice of Decision (~~XXXXXXXXXXXX~~) by (certified) mail upon Mr. David E.

Brex (~~XXXXXXXXXXXX~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. David E. Brex
3 Cypress Drive
Woodbury, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

Sworn to before me this

6th day of October, 1969.

Grace E. Pritchard

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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age, and that on the 3rd day of October, 1969, she served the within
Notice of Decision ~~(XXXXXX XXXX XXXX)~~ by (certified) mail upon

Mr. Paul H. Kirstein (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Paul H. Kirstein
101 Park Avenue
New York, New York 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

6th day of October, 1969.

Grace E. Butcher

Janet Wright

To, Mr. Rook

To be submitted to Commission for signature;
upon your approval.

September 2, 1969

NGW:pw

A handwritten signature in black ink, appearing to be 'Nigel G. Wright', written in a cursive style.

From Nigel G. Wright

BUREAU OF LAW

MEMORANDUM

Income Tax Determination.
Brek, David E. A-2

TO: State Tax Commission

FROM: Francis V. Dow, Hearing Officer

SUBJECT: DAVID E. BREK

Petition for Redetermination of a
Deficiency or for Refund of Personal
Income Taxes under Article 22 of the
Tax Law for the Year 1964

A formal hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on January 23, 1968. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issues involved herein are the substantiation of an exemption, and deductions claimed for contributions and medical expenses.

The taxpayer filed a combined resident income tax return for 1964 in which he reported total income of \$17,086, claimed an exemption for his mother-in-law and claimed deductions for contributions of \$1,030 and for medical and dental expenses of \$317. On April 24, 1967, a notice of deficiency and a statement of audit changes were issued (File No. 28077932) determining additional personal income tax and interest due in the sum of \$124.88 on the basis that the exemption claimed for the taxpayer's mother-in-law was disallowed since the taxpayer failed to submit evidence to substantiate the support alleged to have been provided her and that he did not substantiate \$709 of the amount deducted for contributions and \$70.18 of the amount deducted for medical and dental expenses.

The taxpayer's mother-in-law, Ella Bayer, lived in the taxpayer's home during 1964. The household, in addition to the taxpayer and Ella Bayer, consisted of the taxpayer's wife and two children. During the year, Ella Bayer received \$864 in social security benefits and \$684 in insurance payments which totaled \$1,548. Ella Bayer used this money for her support. The taxpayer claimed that \$3,643.99 was expended for his mother-in-law's support, of which amount he contributed \$2,095.99 and his mother-in-law expended the remainder. The taxpayer did not show the fair market

value of the lodgings furnished to his mother-in-law. He contended that not less than one-fifth of his household expenses was support furnished her. Included in these household expenses were capital expenditures of \$430.73 for a mirror, a mattress and springs, a chain saw, a portable television set, and a bathroom fixture. The taxpayer computed that one-fifth of the depreciation on his house or \$250 was support furnished his mother-in-law. He again claimed depreciation on his house in the amount of \$360 as a home office business expense. He also claimed an additional \$100 for wear and tear on the house and furnishings as support furnished to her. He also contended that \$400 or approximately 40% of the expenses of operating the family's nonbusiness automobile was support furnished her. He claimed all of the expense of operating his other automobile as a business expense. The taxpayer did not substantiate claimed expenditures for support of his mother-in-law in excess of \$750. These alleged expenditures included recreation--\$250, newspapers and magazines--\$25, hair-dressers--\$142.50, donations and gifts--\$107 and miscellaneous expenses--\$100.

Section 1.152-1(2)(1) of the Treasury Regulations provides:

"For purposes of determining whether or not an individual received, for a given calendar year, over half of his support from the taxpayer, there shall be taken into account the amount of support received from the taxpayer as compared to the entire amount of support which the individual received from all sources, including support which the individual himself supplied. The term 'support' includes food, shelter, clothing, medical and dental care, education, and the like. Generally, the amount of an item of support will be the amount of expense incurred by the one furnishing such item. If the item of support furnished an individual is in the form of property or lodging, it will be necessary to measure the amount of such item of support in terms of its fair market value."

It is my opinion that on the evidence presented, the taxpayer has failed to substantiate that he furnished over half of the support of his mother-in-law, and accordingly, he was properly disallowed an exemption for her.

The taxpayer submitted letters from various churches which show that contributions were made to four churches over a number of years. They do not specify the amount contributed during the year in issue. The letters however show that contributions to the churches averaged \$31 a year. The taxpayer also submitted receipts

and cancelled checks totaling \$454 showing contributions to various charitable organizations. He claimed that he made other contributions of \$545 which he could not substantiate by documentary evidence. I recommend that the taxpayer be allowed \$563 for his charitable contributions (\$485 substantiated plus \$78 unsubstantiated) in accordance with the New York District guideline. See Public Information Sheet, May 14, 1965, 651 CCH, para. 6616.

The taxpayer submitted cancelled checks and other evidence showing that he incurred medical and dental expenses for himself and for his wife and children totaling \$761 and that he incurred medical and dental expenses for his mother-in-law totaling \$128. Section 213 of the Internal Revenue Code provides for a deduction for medical care of the taxpayer, his spouse, or a dependent as defined by section 152 of the Code. Since the taxpayer has not shown that his mother-in-law qualified as his dependent, her medical expenses were not deductible. Accordingly, it is my opinion that the taxpayer should be allowed a deduction of \$189 for medical expenses. (Expenses substantiated \$761 less \$572 - 3% of total Federal income, balance \$189.)

For the reasons stated above, I recommend that the decision of the State Tax Commission modifying the notice of deficiency of additional tax and interest due by reducing it \$18.07 and as modified denying the taxpayer's petition be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

Hearing Officer

FVD:lb
Enc.
May 13, 1968

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DAVID E. BREX	:	
for a Redetermination of a	:	D E T E R M I N A T I O N
Deficiency or for Refund of	:	
Personal Income Taxes under	:	
Article 22 of the Tax Law	:	
for the year 1964	:	

The taxpayer having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1964 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on January 25, 1968 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer testified and was represented, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a combined resident income tax return for 1964 in which he reported total income of \$17,086.00, and claimed four exemptions, and deductions for contributions of \$1,030.00 and medical and dental expenses of \$317.00.

(2) That on April 24, 1967, a notice of deficiency and a statement of audit changes were issued (File No. 28077952) determining additional personal income tax and interest due in the sum of \$124.88 on the basis that one exemption claimed by the taxpayer for his mother-in-law was disallowed, since the taxpayer failed to submit evidence to substantiate the support claimed to have been provided her and did not substantiate \$709.00 of the amount deducted for contributions and \$70.18 of the amount deducted for medical and dental expenses.

(3) That during 1964 the taxpayer's mother-in-law, Ella Bayer, lived in the taxpayer's home during the entire year; that the taxpayer's household in addition to himself and Ella Bayer consisted of the taxpayer's wife and two children; that during the year, Ella Bayer received \$864.00 in social security benefits and \$684.00 in insurance payments which totaled \$1,548.00 which she used for her support; that the taxpayer claimed that \$3,643.99 was expended for Ella Bayer's support, of which amount he contributed \$2,095.99. His mother-in-law is alleged to have expended her income of \$1,548.00 on her own support but that she did not testify and there is no evidence as to how she spent this amount or whether any portion of such amount was expended for the benefit of the taxpayer in meeting household, automobile or other expenses; that the taxpayer did not show the fair market value of the lodgings or the use of the automobile which he allegedly furnished to his mother-in-law; that the taxpayer contended that not less than one-fifth of his household expenses constituted support of his mother-in-law; that the taxpayer included in these household expenses capital expenditures of \$430.73 for a mirror, a mattress and springs, a chain saw, a portable television set and a bathroom fixture; that the taxpayer computed the depreciation of his house to be \$1,250.00 of which amount one-fifth or \$250.00 was support furnished to Ella Bayer; that the taxpayer, however, claimed depreciation on his house in the amount of \$360.00 or an excess of 25% of the total alleged depreciation as home office expense which he deducted in computing his taxable income; that he also claimed wear and tear on the house and furnishings in the amount of \$100.00 as support for her; that the taxpayer claimed that \$400.00 or 40% of the expenses of operating the family's nonbusiness automobile was support for Ella Bayer; that the taxpayer claimed all of the expense of operating his other automobile as a business expense; that the taxpayer claimed expenditures for the support of his mother-in-law in excess of \$750.00 which he did not substantiate by any documentary evidence; that these unsubstantiated expenditures

included recreation--\$250.00, newspapers and magazines--\$25.00, hairdressers--\$142.50, donations and gifts--\$107.00 and miscellaneous expenses--\$100.00; that the taxpayer did not substantiate that half of his support for his mother-in-law was furnished by him.

(4) That the taxpayer submitted letters from various clergymen which show that contributions were made to four churches during 1964 totaling \$31.00; that, in addition, the taxpayer submitted receipts or cancelled checks showing that the taxpayer and his wife made the following charitable contributions:

Hofstra College	\$100.00
Holy Name of Jesus Christ Church	227.00
Hebrew Academy of Long Beach	25.00
St. La Salle Auxiliary	50.00
CLU Development Fund of the American	10.00
College of Life Underwriters	
Syosset Fire Department	25.00
March of Dimes	15.00
Syosset Scholarship Fund	<u>2.00</u>
TOTAL	<u>\$454.00</u>

(5) That the taxpayer claimed that he and his wife made charitable contributions totaling \$1,030.00 during 1964; that the taxpayer did not submit any other documentary evidence to substantiate the charitable deductions which he claims were made during the year.

(6) That the taxpayer submitted cancelled checks and other evidence showing that he incurred medical and dental expenses for himself, his wife and his children totaling \$761.00; that the taxpayer submitted documentary and other evidence to show that he incurred medical and dental expenses for his mother-in-law totaling \$128.00

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DECIDES:

(A) That the taxpayer was properly disallowed one exemption since he failed to substantiate that he provided over one half of the support of his mother-in-law, Ella Bayer, as required by section 152 of the Internal Revenue Code.

(B) That the taxpayer is allowed deductions for charitable contributions in the amount of \$485.00 which he substantiated by documentary evidence as set forth in finding of fact No. (4).

(C) That, in addition, the taxpayer is allowed \$78.00 for charitable contributions which he was unable to substantiate by documentary evidence.

(D) That the taxpayer substantiated that he incurred medical and dental expenses for himself, his wife and children totaling \$761.00 of which amount \$189.00 was deductible; that the taxpayer is not allowed any deduction for medical expenses incurred in behalf of his mother-in-law since she was not a dependent of his as defined by section 152 of the Internal Revenue Code.

(E) That, accordingly, the taxpayer's tax liability for 1964 is recomputed as follows:

<u>Item</u>	<u>Amount shown</u> <u>On Return</u>	<u>Corrected</u> <u>Amount</u>	<u>Adjustment</u>
Exemptions	\$ 2,400.00	\$ 1,800.00	\$ 600.00
Contributions	1,030.00	563.00	467.00
Medical and dental expense	317.00	189.00	128.00
Total adjustment			\$ 1,195.00

COMPUTATION OF TAX:

New York taxable income per return	11,758.00
	<u>1,195.00</u>
	\$ 12,953.00


Tax on income	\$ 676.24
Statutory credit	<u>12.50</u>
Net tax	663.74
Tax previously stated	<u>568.50</u>

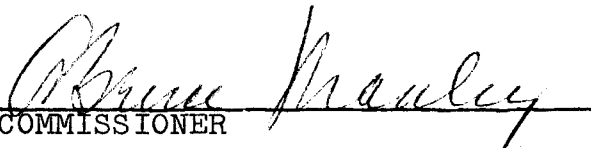
ADDITIONAL PERSONAL INCOME TAX DUE: \$95.24


(F) That, accordingly, the notice of deficiency and statement of audit changes (File No. 28077952) is modified by cancelling additional income tax to the extent of \$16.11; that the additional income tax in the modified amount of \$95.24 is correct and the same is due with such interest if any, which may be lawfully due under section 684 of the Tax Law; that the taxpayer's petition for a redetermination of a deficiency or for refund of personal income taxes with respect thereto as modified be and the same is hereby denied.

Dated: Albany, New York this 19th day of September, 1969

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER