

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT W. SENGSTAKEN and

GERALDINE N. SENGSTAKEN

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(*)~~ 22 of the
Tax Law for the Year ~~(*)~~ 1970.

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

State of New York
County of Albany

MARTHA FUNARO

, 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 17th day of July, 1974, she served the within
Notice of Decision ~~(or Determination)~~ by (certified) mail upon Robert W. and
Geraldine N. Sengstaken

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

wrapper addressed as follows: Mr. & Mrs. Robert W. Sengstaken

The Rise and Shadow Lane

Woodbury, New York 11797

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.

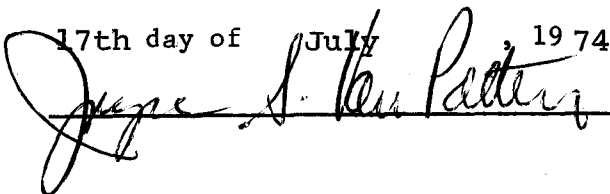
That deponent further says that the said addressee is the ~~representative~~
~~of~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~representative of the~~ petitioner.

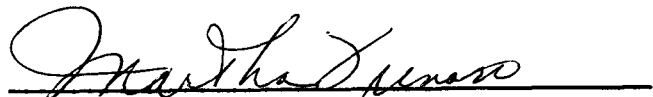
Sworn to before me this

17th day of

July

, 1974





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT W. SENGSTAKEN and
GERALDINE N. SENGSTAKEN

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) 1970.

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State of New York
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MARTHA FUNARO

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of July, 1974 she served the within
Notice of Decision (~~on Determination~~) by (certified) mail upon Robert Val
Gehlmeyer, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Robert Val Gehlmeyer, Esq.

21 Borglum Road

Manhasset, New York 11030

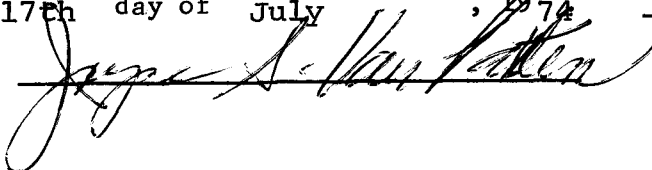
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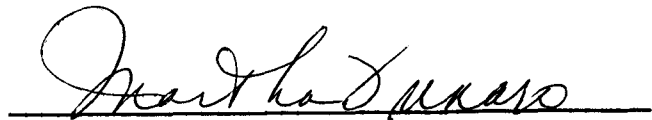
That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

17th day of July

1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York

July 17, 1974

Mr. & Mrs. Robert W. Sengstaken
The Rise and Shadow Lane
Woodbury, New York 11797


Dear Mr. & Mrs. Sengstaken:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section (x) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **four months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


NIGEL G. WRIGHT
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT W. SENGSTAKEN and	:	
GERALDINE N. SENGSTAKEN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1970.	:	

Petitioners, Robert W. Sengstaken and Geraldine N. Sengstaken, filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970. (File No. 0-64461281.)

A calendar call was held at the offices of the State Tax Commission, 2nd Floor, 114 Old Country Road, Mineola, New York, on April 23, 1974, at 9:30 A.M., at which Robert Val Gehlmeyer, C.P.A., appeared on behalf of the petitioners. On April 23, 1974, Mr. Gehlmeyer advised the State Tax Commission, in writing, that petitioners waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file.

ISSUE

Were payments made by petitioner, Robert W. Sengstaken, to his former wife during the year 1970, alimony and therefore deductible from petitioner's income for said year?

FINDINGS OF FACT

1. Petitioners, Robert W. Sengstaken and Geraldine N. Sengstaken, timely filed a New York State income tax resident return for the

year 1970. On their return, petitioners deducted alimony payments in the sum of \$9,268.66, which petitioner, Robert W. Sengstaken, claimed that he had paid to his former wife, Ruth G. Sengstaken, now Mrs. Kenneth W. Webb, during the year 1970.

2. On January 31, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Robert W. Sengstaken and Geraldine N. Sengstaken, disallowing the aforementioned alimony payments and imposing additional personal income tax for the year 1970 in the sum of \$1,297.61. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,359.42.

3. On August 2, 1957, petitioner, Robert W. Sengstaken and his former wife entered into a separation agreement. The agreement provided that petitioner was to pay his wife, annually, 20% of his gross income after separation, but prior to her remarriage. One thousand dollars (\$1,000.00) of such annual payment was to be allocated to the support of each of their two children. It was further agreed that the total yearly support of the two children was not to exceed \$1,950.00 per year. The agreement further provided that upon the remarriage of his wife, petitioner was to pay her, solely for the support and maintenance of the children, 10% of his gross income.

4. On February 18, 1961, petitioner, Robert W. Sengstaken's former wife, Ruth G. Sengstaken, remarried.

5. Petitioner, Robert W. Sengstaken, claimed that during the year 1970, he made payments to his former wife totalling

\$11,268.66. He further claimed that \$2,000.00 of that total was for child support and the balance, \$9,268.66 constituted alimony. He submitted no documentary evidence to support this allocation of payments.

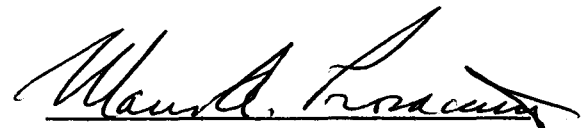
CONCLUSIONS OF LAW

A. That payments made by petitioner, Robert W. Sengstaken, to his wife after her remarriage were entirely for the support of their two children and, therefore, not deductible from petitioner's income in accordance with the meaning and intent of section 71 of the Internal Revenue Code (U.S. v. Lester, 366 U.S. 299).

B. That the petition of Robert W. Sengstaken and Geraldine N. Sengstaken is denied and the Notice of Deficiency issued January 31, 1972, is sustained.

DATED: Albany, New York
July 17, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER