

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING SWERDLOW and GERTRUDE SWERDLOW

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

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

State of New York  
County of Albany

JANET MACK

, 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 December , 1975 , she served the within  
Notice of Decision ~~(XX) (Deficiency)~~ by (certified) mail upon IRVING SWERDLOW  
and GERTRUDE SWERDLOW ~~(XX) (Representative of the)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. and Mrs. Irving Swerdlow  
521 Hillsboro Parkway  
Syracuse, New York 13214  
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 the)~~  
~~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 December , 19 75

Mary Groff

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING SWERDLOW and GERTRUDE SWERDLOW

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

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

State of New York  
County of Albany

JANET MACK, 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 December, 1975, she served the within  
Notice of Decision ~~FOR DEFICIENT TAXES~~ by (certified) mail upon DANIEL J. BROWN, C.P.A.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Daniel J. Brown, C.P.A.  
400 Montgomery Street  
Syracuse, New York 13202

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 December, 1975

Mary Groff

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION  
HEARING UNIT.

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER  
(518) 457-**200880**

**DATED:** Albany, New York  
**December 17, 1973**

**Mr. and Mrs. Irving Sverdlov**  
**521 Hillshore Parkway**  
**Syracuse, New York 13214**

**Dear Mr. and Mrs. Sverdlov:**

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 **4 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,

**L. ROBERT LEISNER**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

## STATE TAX COMMISSION

A formal hearing was held at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on February 26, 1975, before L. Robert Leisner, Hearing Officer. The taxpayers were represented by Daniel J. Brown, C.P.A. and the Income Tax Bureau was represented by Saul Heckelman, Esq. (Alexander Weiss, Esq. of counsel).

## ISSUE

Whether costs of special food may be deducted as a medical expense  
by petitioners, Irving Swerdlow and Gertrude Swerdlow?

FINDINGS OF FACT

1. Petitioners, Irving Swerdlow and Gertrude Swerdlow, timely filed New York State income tax return for the year 1970.
2. A Notice of Determination of deficiencies in personal income tax for the year 1970 was issued on December 28, 1973, against the taxpayer under File No. 058870772.
3. The taxpayers petitioned for a redetermination of the deficiencies.
4. Petitioners, Irving Swerdlow and Gertrude Swerdlow, are both professors of economics. He was chairman of the Economics Department at Syracuse University. She is a professor at Onondaga Community College.
5. Both petitioners, Irving Swerdlow and Gertrude Swerdlow, and their son are diabetic. In the year 1970, their son was a dependent.
6. On their 1970 New York income tax return petitioners claimed medical expenses for the cost of special foods necessitated by said diabetes. Petitioners arrived at the amount claimed based on the excess price of the food for diabetics over the cost of foods which are of an ordinary nature. They compared the prices of items in the two categories at three food markets. Petitioners, Irving Swerdlow

and Gertrude Swerdlow, determined that the excess of the cost of a special diet over the amount which would otherwise be spent for food was \$1.00 per day per person.

CONCLUSIONS OF LAW

A. The special foods, that petitioners bought, the excess cost of which was claimed as a medical exemption, were part of the normal dietary requirements of petitioners and their dependent son.

B. The special foods, prescribed for petitioners and their son by a physician, the excess cost of which were claimed as a medical exemption, were not a supplement to normal dietary requirements. (Rev. Rul. 55-261, 1955-1 CB 307).

C. The petition is denied and the determination of the income tax deficiency is sustained.

D. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York  
December 17, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER