

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS STOERZINGER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article ~~(s)~~ 22 of the  
Tax Law for the Year(s) ~~or Period(s)~~ 1970  
and 1972.

State of New York  
County of Albany

John Huhn, 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 6th day of February, 1978, she served the within  
Notice of Decision by (certified) mail upon Louis Stoerzinger

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Louis Stoerzinger  
154 Martling Avenue  
Tarrytown, New York 10591

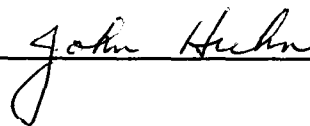
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

6th day of February, 1978

  
\_\_\_\_\_

  
\_\_\_\_\_



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

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

February 6, 1978

Louis Stoerzinger  
154 Hartling Ave.  
Tarrytown, NY 10591

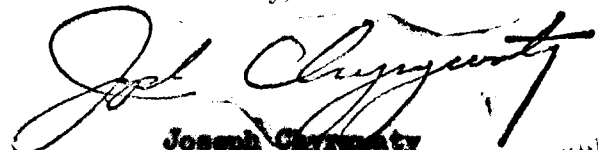
Dear Mr. Stoerzinger:

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 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

  
Joseph Chynoweth  
Hearing Examiner

cc: ~~XXXXXXXXXXXXXXXXXXXX~~  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
LOUIS STOERZINGER : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Years :  
1970 and 1972. :  
:

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Petitioner, Louis Stoerzinger, residing at 154 Martling Avenue, Tarrytown, New York 10591, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970 and 1972 (File No. 13426).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 28, 1977 at 9:15 A.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner was entitled to claim dependency exemptions for the years 1970 and 1972 for his two daughters who resided with his former wife during said years.

II. Whether petitioner was entitled to claim a deduction for the year 1970 for medical and dental expenses paid by him for medical services rendered to his two daughters who resided with his former wife during said year.

FINDINGS OF FACT

1. Petitioner, Louis Stoerzinger, filed New York State income tax returns for the years 1970 and 1972. On these returns, he claimed dependency exemptions for his two daughters, as well as a deduction for medical and dental expenses rendered to them and paid by him.

2. On March 25, 1974, the Income Tax Bureau issued two notices of deficiency against petitioner, Louis Stoerzinger. Said notices were based on statements of audit changes issued on June 6, 1973 and December 10, 1973 for the years 1970 and 1972, respectively. The statements disallowed dependency exemptions for the years 1970 and 1972 claimed by him for his two daughters. The statement issued for the year 1970 also disallowed a deduction for medical and dental expenses of \$1,570.00 for medical services rendered to petitioner's daughters.

3. Petitioner, Louis Stoerzinger, was required by court order in his divorce settlement to pay \$15.00 per week in child support for each of his two daughters, both of whom resided with his former wife. The court order also required him to pay all of the medical expenses incurred by the two children.

4. During the years 1970 and 1972, petitioner contributed a total of \$3,568.00 and \$2,372.55, respectively, towards the support of his two daughters. The aforesaid amounts were comprised of court-ordered support payments, medical expenses and miscellaneous payments.

5. A subpoena, duces tecum, was issued and served upon petitioner's former wife and her present husband. They did not appear but replied with a registered letter which contained an estimated and incomplete list of support items for the two children, but little in supporting evidence.

6. For the year 1970, the Income Tax Bureau allowed the dependency exemptions to petitioner's former wife for the two daughters. However, the Income Tax Bureau's computations which showed that the petitioner's former wife was entitled to the dependency exemptions, was not available.

CONCLUSIONS OF LAW

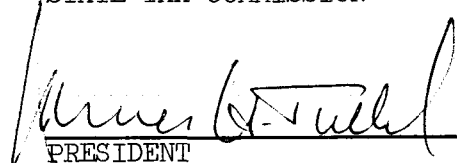
A. That the petitioner, Louis Stoerzinger, provided more than \$1,200.00 towards the support of his two children in both 1970 and 1972; that his former wife did not clearly establish that she provided more for the support of each child during said years than did the petitioner in accordance with the meaning and intent of section 152(e)(2) of the Internal Revenue Code, and that, therefore, the petitioner was entitled to claim dependency exemptions for his two daughters for the years 1970 and 1972, pursuant to section 616(a) of the Tax Law.

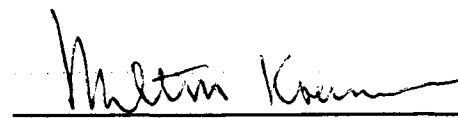
B. That the petitioner was entitled to deduct the medical and dental expenses paid by him for services rendered to his daughters in the amount of \$1,580.00 for the year 1970.

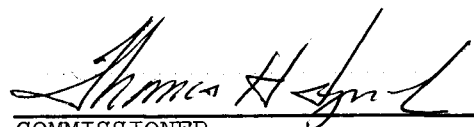
C. That the petition of Louis Stoerzinger is granted and the two notices of deficiency issued March 25, 1974 for the years 1970 and 1972, respectively, are cancelled.

DATED: Albany, New York  
February 6, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER