

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Alfred S. & Anne C. Bearman :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1970. :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Alfred S. & Anne C. Bearman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alfred S. & Anne C. Bearman

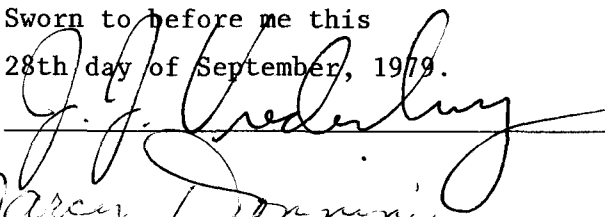
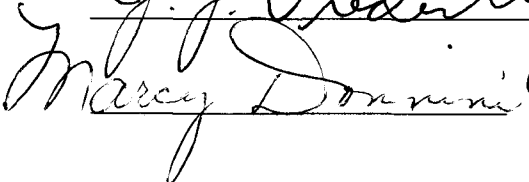
1677 84th St.

Pacific Palisades, CA 90272

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of September, 1979.



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Alfred S. & Anne C. Bearman
1677 84th St.
Pacific Palisades, CA 90272

Dear Mr. & Mrs. Bearman:

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,

A handwritten signature in cursive script, appearing to read "Robert A. Tully".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ALFRED S. BEARMAN and ANNE C. BEARMAN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1970.

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DECISION

Petitioners, Alfred S. and Anne C. Bearman, 454 Surf View Drive, Pacific Palisades, California 90272, 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 1970 (File No. 01675).

On December 3, 1974, petitioners advised the State Tax Commission, in writing, that they desired to waive a formal hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUE

Whether unreimbursed business expenses incurred on behalf of a partnership were deductible on petitioners' personal income tax return.

FINDINGS OF FACT

1. Petitioners, Alfred S. and Anne C. Bearman, timely filed a New York State Income Tax Nonresident Return for 1970, on which petitioner Alfred S. Bearman reported his distributive share of partnership income.

2. Petitioner Alfred S. Bearman was a general partner of James H. Oliphant & Co., a stockbrokerage partnership doing business within and without New York State during 1970. The partnership filed a New York State partnership return showing each partner's share of income, gain, loss, and deduction which was derived from or connected with New York State sources.

3. The Nonresident Partner Allocation Schedule which was attached to the partnership return showed the following New York amounts to be reported on Mr. Bearman's personal income tax return:

Ordinary Income	\$43,700.42
Additional First-Year Depreciation	(40.74)
Qualifying Dividends	105.45
Net Loss under I.R.C. Section 1231	(1,213.46)
Income (and Unincorporated Business) Taxes	2,927.55
U.S. Treasury Interest	(362.20)

4. On page two of their income tax return, petitioners reported \$28,181.00 as partnership income. This amount represented petitioner Alfred Bearman's distributive share of partnership ordinary income and additional depreciation, less unreimbursed partnership expenses of \$15,479.00.

5. On March 25, 1974, the Income Tax Bureau issued a Notice of Deficiency to petitioners, which asserted additional personal income tax of \$2,103.44, plus interest of \$371.55, for a total of \$2,474.99. Said Notice was issued on the grounds that the amount of partnership income reported on the nonresident personal income tax return was erroneous, and that the amounts shown on the partnership nonresident allocation schedule were correct.

6. Petitioners contended that the unreimbursed partnership expenses which they claimed on their return when filed, were not taken into consideration at the time the Notice of Deficiency was issued. Petitioners also contended that said expenses should be allowed, since the Internal Revenue Service had audited and accepted their Federal income tax return as filed. Petitioners failed to submit documentary or other evidence to support their contentions.

CONCLUSIONS OF LAW

A. That ordinary and necessary expenses of a partnership business are properly deducted on the partnership return. Then as an individual, the partner reports his distributive share of the net income of the partnership,

after making such deductions. As a general rule, he may not take ordinary and necessary expenses of the partnership on his individual return (Hiram C. Wilson, 17 B.T.A. 976; Western Construction Co., 14T.C. 453, 471). Here the unreimbursed partnership business expenses which petitioner Alfred Bearman incurred on behalf of the partnership, were ordinary and necessary expenses of the partnership and were not deductible on petitioner's return. An exception to this general rule occurs when, under a partnership agreement, a partner has been required to pay certain partnership expenses out of his own funds. Said partner is then entitled to deduct the amount thereof from his individual gross income. However, petitioners have not shown that the James H. Oliphant & Co. partnership agreement required petitioner Alfred Bearman to pay any of the expenses in question out of his own funds (See: Frederick S. Klein, 25 T.C. 1045).


B. That the petition of Alfred S. and Anne C. Bearman is denied, and the Notice of Deficiency issued on March 25, 1974 is sustained, together with such additional interest as may be lawfully owing.

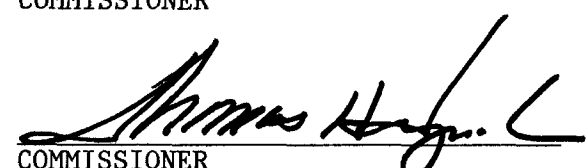
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER