

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

James & Barbara Palummeri :

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 James & Barbara Palummeri, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James & Barbara Palummeri

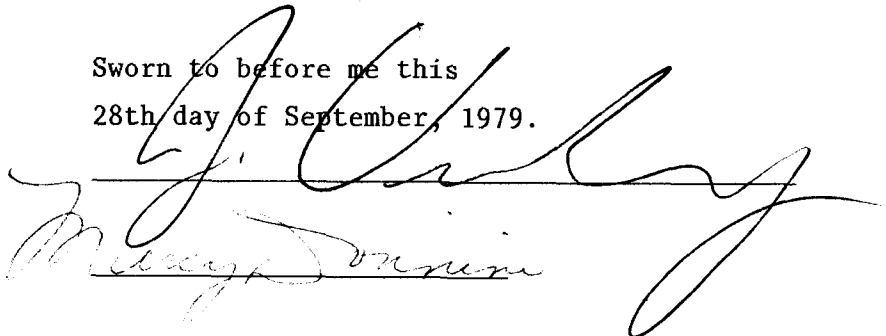
47 Heather La.

Mahwah, NJ 07430

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.



A large, stylized handwritten signature in black ink, likely belonging to Jay Vredenburg, is written over a horizontal line. Below the signature, the name 'Jay Vredenburg' is printed in a smaller, cursive font.

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

James & Barbara Palummeri
47 Heather La.
Mahwah, NJ 07430

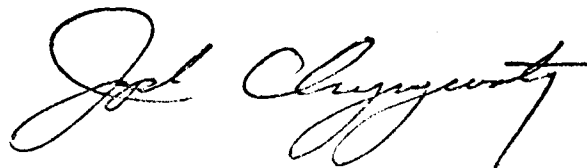
Dear Mr. & Mrs. Palummeri:

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,



cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JAMES PALUMMERI and BARBARA PALUMMERI : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Year 1970. :

Petitioners, James and Barbara Palummeri, 47 Heather Lane, Mahwah, New Jersey 07430, 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. 13612).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 19, 1978 at 9:15 A.M. Petitioner James Palummeri appeared pro se and for his wife, petitioner Barbara Palummeri. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioners properly deducted the amounts claimed on their 1970 personal income tax return for medical and educational expenses.

FINDINGS OF FACT

1. Petitioners, James and Barbara Palummeri, timely filed a New York State Income Tax Resident Return (Form IT-201) for 1970, on which they deducted \$2,400.00 in medical expenses and \$519.00 in education expenses.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioners, imposing additional personal income tax for 1970. This was done on the grounds that petitioners failed to substantiate the amount deducted for medical expenses, and that the educational expense, which was attributable to the cost of flying lessons, was not substantiated and was not a proper deduction. Accordingly, the Income Tax Bureau issued a Notice of Deficiency on April 12, 1974 for \$224.91 in personal income tax, plus \$40.39 in interest, for a total due of \$265.30.

3. The Income Tax Bureau also made other adjustments to petitioners' tax return, which petitioners do not contest and which are not at issue.

4. Petitioners submitted documentary evidence to substantiate medical expenses of \$1,859.05 and \$102.92 in drugs. The cost of flying lessons (\$519.00) was fully substantiated.

5. Petitioner James Palummeri was employed by Chicago Heater Company in 1969 as an outside sales representative. His territory included Long Island and some New York City accounts. He was hired for the purpose of covering western Connecticut, Rhode Island and southern Massachusetts. Mr. Palummeri's testimony indicated that he was aware of the necessity of obtaining a pilot's license in order to cover this territory. The Chicago Heater Company desired travel by small, rental aircraft because of the size of the territory and the company's location. Petitioner took flying lessons in 1969 and during the year at issue.

CONCLUSIONS OF LAW

A. That it was a condition of petitioner James Palummeri's employer that he possess a pilot's license when he was hired as a salesman. He had not met the minimum educational requirements, as far as flying was concerned, for qualification in his position; therefore, the expenses which he incurred in learning to fly were personal in nature and were not a properly deductible educational expense, within the meaning and intent of section 162 of the Internal Revenue Code.

B. That the petition of James and Barbara Palummeri is granted to the extent of allowing (as proper deductions) the substantiated medical expenses, as reduced by the 1% and 3% Federal limitations. This results in an allowable medical deduction of \$1,293.00, thereby reducing the personal income tax shown due on the Notice of Deficiency from \$224.91 to \$134.40. The Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued April 12, 1974, together with such interest as may be lawfully owing and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

SEP 28 1979

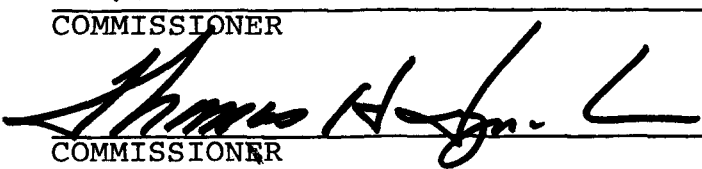
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER