

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Muayad & Janet Al-Hussaini :  
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 1974. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Muayad & Janet Al-Hussaini, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Muayad & Janet Al-Hussaini  
180 N. Main St.  
Hornell, NY 14843

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  
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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Personal Income Tax :

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for the Year 1974. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon David A. Schultz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David A. Schultz  
Shults & Shults, Attys.  
9 Seneca St.  
Hornell, NY 14843

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  
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 16, 1980

Muayad & Janet Al-Hussaini  
180 N. Main St.  
Hornell, NY 14843

Dear Mr. & Mrs. Al-Hussaini:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
David A. Schultz  
Shults & Shults, Attys.  
9 Seneca St.  
Hornell, NY 14843  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
MUAYAD AL-HUSSAINI and JANET AL-HUSSAINI	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	

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Petitioners, Muayad and Janet Al-Hussaini, 180 North Main Street, Hornell, New York 14843, 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 1974 (File No. 15840).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on July 16, 1979 at 2:00 P.M. Petitioner Janet Al-Hussaini appeared with David A. Schultz, Esq. The Audit Division appeared by Peter Crotty, Esq. (Kathy L. Sanderson, Esq., of counsel).

ISSUES

I. Whether deductions claimed by the petitioners for the rental of an apartment, entertainment expenses and travel expenses were deductible and substantiated.

II. Whether petitioners properly claimed a deduction for education expenses on their New York State personal income tax return for 1974.

FINDINGS OF FACT

1. Petitioners, Muayad Al-Hussaini and Janet Al-Hussaini, filed a joint New York State Income Tax Resident Return for 1974.

2. On December 12, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners based on the following:

(a) The income reported on petitioners' 1974 New York State Income Tax Resident Return was understated by \$1,000.00 due to a mathematical error in subtracting line 15 from line 14 on schedule A of the tax form.

(b) The disallowance for the amount claimed for the rental of an apartment, entertainment expenses and travel expenses claimed by petitioner Muayad Al-Hussaini since they were unsubstantiated.

(c) The disallowance of the entire amount claimed as an educational expense by petitioner, Janet Al-Hussaini since she was no longer engaged in a business or profession of nursing.

In accordance with the aforementioned, a Notice of Deficiency was issued against petitioners on May 24, 1976, asserting personal income tax of \$1,161.15, plus interest of \$109.24, for a total due of \$1,270.39.

3. Petitioners conceded the adjustment due to a mathematical error and that adjustment is not at issue.

4. Petitioners lived in Hammondsport, New York, some forty miles from Hornell, New York where the petitioner, Doctor Muayad Al-Hussaini was on staff at two hospitals. Petitioner rented an efficiency apartment in Hornell during the winter months so as to be available when on emergency room duty at the hospitals. Petitioners submitted no documentary evidence for the \$900.00 rental expense claimed.

5. Petitioner, Muayad Al-Hussaini, deducted \$500.00 for trips to doctors' conventions and attending urological meetings in Washington, D.C. Petitioners failed to submit documentary evidence to substantiate said claim.

6. Petitioner, Muayad Al-Hussaini, claimed as an expense, \$1,489.88 for the professional entertaining of doctors living in the Bath and Hornell, New York areas. This also included the entertaining of visiting doctors and prospective new doctors at the petitioners' home. Petitioners submitted three

cancelled checks written to the order of Diners Club which totaled \$641.56.

7. The petitioners' only source of professional income was from an Urologic Group, P.C. located at 20 Elm Street, Hornell, New York.

8. Petitioner, Muayad Al-Hussaini, submitted eight other cancelled checks after the hearing with no explanation as to their significance.

9. Petitioner, Janet Al-Hussaini, graduated from the Methodist Hospital School of Nursing in Brooklyn, New York. The petitioner received her diploma in 1964 and became a registered nurse. She worked, as a nurse, at Strong Memorial Hospital in Rochester, New York from September, 1964 through February, 1967, at which time she returned with her husband to his homeland in Iraq. From September, 1969 through March, 1970, petitioner, Janet Al-Hussaini, was employed as a nurse at the V.A. Hospital in Albany, New York. Petitioners then moved to the Hornell, New York area where Mrs. Al-Hussaini entered the nursing academic program offered at Alfred University in September of 1970. She received her Bachelor of Science in Nursing in January of 1975. During the summers of 1971 and 1972, the petitioner worked as a nurse at the R. Davanport Hospital in Bath, New York. However, since that time the petitioner has not worked, for compensation, as a nurse.

10. During the year at issue, the petitioner, Janet Al-Hussaini, claimed the following educational expenses; tuition of \$2,065.00, books of \$257.94 and fees and exams of \$173.00. Also deducted was \$1,352.80 for a tour of the Middle East taken by Mrs. Al-Hussaini in January of 1975. The Middle East tour was officially sponsored by Alfred University. In order to qualify for graduation from Alfred University, every student must have successfully accomplished two projects. Petitioner chose the tour as one of her two projects because her husband was from Iraq and health conditions in the Middle East were a matter of major concern to her.

11. Petitioner, Janet Al-Hussaini, contended that she will return to the nursing profession after raising her children.

CONCLUSIONS OF LAW

A. That petitioner, Muayad Al-Hussaini, failed to sustain the burden of proof imposed by section 689(e) of the Tax Law and section 274(d) of the Internal Revenue Code necessary to support his contention that he was entitled to deduct, in full, the amounts claimed for business expenses.

B. That petitioner, Muayad Al-Hussaini, improperly deducted expenses for the rental of an apartment, since said expenses did not come within the intent of section 162 of the Internal Revenue Code since the motivating factors for the expenses were the personal convenience and necessities of the employee.

C. That a physician may deduct the cost of entertainment, provided he can establish that such expenses are ordinary and necessary business expenses and clearly related to the production of business income. That the criteria to be used in establishing the deductibility of entertainment expenses are set forth in Special Ruling, June 13, 1958, which is reported in (1959) Stand. Fed. Tax Rep. (CCH) ¶6575. That petitioners have not met the requirements to deduct entertainment expenses.

D. That a taxpayer who is not currently employed or is not otherwise actively engaged in a trade or business is not entitled to a deduction for the expense of any education under taken during such period of unemployment or inactivity. Accordingly, any business expenses claimed for the activities engaged in this case, by the petitioner Janet Al-Hussaini, during the period at issue, are not deductible for income tax purposes.

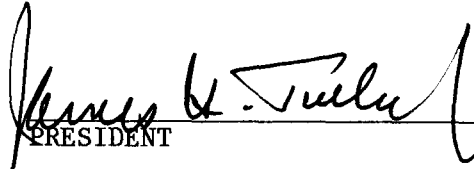
E. That the petition of Muayad Al-Hussaini and Janet Al-Hussaini is

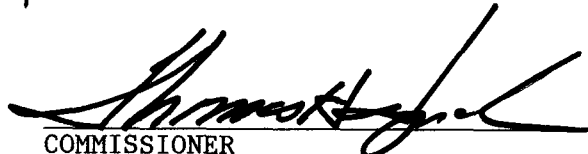
denied and the Notice of Deficiency issued May 24, 1976 is sustained, together with such additional interest as may be lawfully owing.

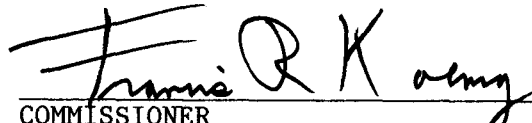
DATED: Albany, New York

STATE TAX COMMISSION

MAY 16 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER