

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
William C. Brown :
and Joan W. Brown : 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 1973. :

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 November, 1980, he served the within notice of Decision by certified mail upon William C. Brown, and Joan W. Brown, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William C. Brown
and Joan W. Brown
38-57 233rd St.
Douglaston, NY 11363

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 November, 1980.

Deborah A. Bank

J. Vredenburg

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

November 28, 1980

William C. Brown
and Joan W. Brown
38-57 233rd St.
Douglaston, NY 11363

Dear Mr. & Mrs. Brown:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
WILLIAM C. BROWN
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1973.

DECISION

In the Matter of the Petition
of
JOAN W. BROWN
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1973.

Petitioners, William C. Brown and Joan W. Brown, 38-57 233rd Street, Douglaston, New York, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File Nos. 17917 and 17918).

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 May 13, 1980 at 9:40 A.M. Petitioner William C. Brown appeared pro se and for his wife, petitioner Joan W. Brown. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioners have sufficient evidence to establish contributions of \$1,610.00, interest expense of \$1,040.00 and education expenses of \$2,693.00.

FINDINGS OF FACT

1. Petitioners, William C. Brown and Joan W. Brown, timely filed a New

York State Combined Income Tax Return for the year 1973, each reporting various items of income and deductions.

2. On December 20, 1976, the Audit Division issued a Notice of Deficiency for \$151.03, plus interest of \$30.38, against petitioner William C. Brown and another against petitioner Joan W. Brown for \$162.95, plus interest of \$32.78. Each deficiency was for the year 1973 and was accompanied with a Statement of Audit Changes, which outlined the adjustments as follows:

<u>ITEM</u>	<u>PER RETURN</u>	<u>ALLOWED</u>	<u>ADJUSTMENT</u>
Contributions	\$1,610.00	\$ 223.00	\$1,387.00
Exemption - Mother	650.00	650.00	-0-
Interest Expense	1,040.00	425.00	615.00
Education Expense	2,693.00	935.00	1,758.00
Capital Loss	(1,000.00)	(500.00)	500.00
Modif. Line 6D Tax Subtraction	(1,109.13)	1,468.92	359.79
Total Adjustment			<u>\$4,619.79</u>

The total adjustment of \$4,619.79 was allocated to petitioner William C. Brown in the sum of \$2,210.56 and to petitioner Joan W. Brown in the sum of \$2,409.23, which included the capital loss adjustment of \$500.00. The capital loss adjustment of \$500.00 and the modification adjustment of \$359.79 were conceded and are not at issue.

3. Although petitioner William C. Brown argued that he and his wife (petitioner Joan W. Brown) donated to charity more than the \$223.00 allowed by the Audit Division, no documentary evidence was submitted supporting his arguments.

4. Petitioner William C. Brown testified that he estimated the interest expense deduction by multiplying the gross amount of his credit bills by 18 percent. He further testified that he and his wife paid interest to an individual who had granted them a personal loan. The amount, or interest rate, of the loan was not revealed.

5. Petitioner William C. Brown was a full-time assistant professor of Business Administration at St. Thomas Aquinas College and an active doctoral student at St. John's University during the year 1973. Petitioner William C. Brown was a candidate for a Ph.D in Sociology at St. John's University and was primarily involved in his doctoral dissertation.

6. Petitioner William C. Brown testified that petitioner Joan W. Brown was a guidance counselor during 1973 and took related courses at New York University. However, he was not aware whether petitioner Joan W. Brown had tenure, or whether these courses were required by her employer. Course descriptions were not submitted, except for the aforementioned testimony that they were "related" to her occupation as a guidance counselor.

7. Documentary evidence establishing proof of payment, or that \$2,693.00 in educational expenses were incurred by both petitioners collectively was not submitted.

CONCLUSIONS OF LAW

A. That petitioners, William C. Brown and Joan W. Brown, have failed to sustain the burden of proof as required by section 689(e) of the Tax Law in establishing that they were entitled to deductions greater than that allowed by the Audit Division (as outlined in Finding of Fact "2" of this decision).

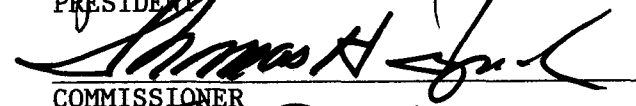
B. That the petitions of William C. Brown and Joan W. Brown are denied and the notices of deficiency issued December 20, 1976 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER