

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Rebecca Weisberg :

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 Years 1967,1968. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Rebecca Weisberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

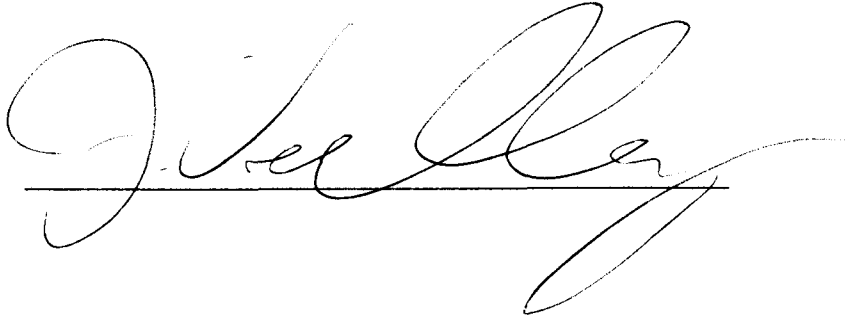
Rebecca Weisberg
435 West 23rd St.
New York, NY 10011

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
3rd day of October, 1980.

Rebecca Weisberg



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Rebecca Weisberg :

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 Years 1967, 1968. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Reuben Abel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Reuben Abel
17 Monroe Ave.
Larchmont, NY 10538

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
3rd day of October, 1980.

Rebecca Weisberg

[Signature]

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

October 3, 1980

Rebecca Weisberg
435 West 23rd St.
New York, NY 10011

Dear Ms. Weisberg:

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
Reuben Abel
17 Monroe Ave.
Larchmont, NY 10538
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
REBECCA WEISBERG	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1967 and 1968.	:	

Petitioner, Rebecca Weisberg, 435 West 23rd Street, New York, New York 10011, 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 1967 and 1968 (File No. 01192).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 21, 1980 at 2:45 P.M. Petitioner appeared by Reuben Abel, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner is properly entitled to a deduction for travel expenses incurred to attend a 1967 convention of the Zionist Organization of America.

II. Whether business expenses incurred by petitioner during 1967 and 1968, relating to her activities as a painter, are properly deductible.

FINDINGS OF FACT

1. Petitioner, Rebecca Weisberg, timely filed New York State income tax resident returns for the years 1967 and 1968.

2. On February 21, 1969 the Audit Division issued a Statement of Audit Changes to petitioner for the year 1967 wherein miscellaneous deductions claimed for expenses incurred during a trip to Israel and Copenhagen of \$982.00, and expenses related to petitioner's painting activities of \$1,315.00 were disallowed as the result of an audit conducted. Accordingly, a Notice of Deficiency was issued against petitioner on June 30, 1969 asserting additional personal income tax of \$144.47, plus interest of \$10.47, for a total due of \$154.94.

3. On January 28, 1971 the Audit Division issued a Statement of Audit Changes to petitioner for the year 1968 wherein miscellaneous deductions of \$1,979.00, claimed with respect to petitioner's painting activities, were disallowed since it had not been shown that "the claimed expenses resulted from transactions entered into for profit or were incurred in a trade or business." Accordingly, a corresponding Notice of Deficiency was issued against petitioner on September 27, 1971 asserting additional personal income tax of \$170.82, plus interest of \$25.11, for a total due of \$195.93.

It should be noted that in addition to the aforementioned adjustments, contributions were also adjusted for each year at issue, but since such adjustments were not contested by petitioner, they are not at issue herein.

4. Petitioner, Rebecca Weisberg, a full time English teacher in the New York City school system, attended the 70th Jubilee Convention of the Zionist Organization of America which was held in Israel from July 19 through 26, 1967. Her attendance was through a group tour package which consisted of three weeks of escorted activities from July 13 through August 3, 1967. Said tour, which was one of several offered by the sponsoring organization, was predominantly comprised of sightseeing activities in Israel, Copenhagen, Oslo

and Stockholm. Petitioner contended that she was invited as an official delegate to the convention but no evidence was submitted to verify said contention.

5. Petitioner claimed \$982.00 as a deduction for expenses incurred on the trip and contended such expenses are properly deductible as an educational expense. Although petitioner contended that the expenses were previously substantiated on audit, and only the nature of the deduction is at issue, the record shows no indication of this to be so.

6. During the years 1967 and 1968 petitioner deducted expenses relating to her painting activities of \$ 1,315.00 and \$1,979.00 respectively. She contended that such expenses are deductible since they were incurred in connection with her professional activities as an artist.

7. Petitioner used one room in her residence as a studio and painted during her spare time. Extensive documentation was submitted to show that her works have been displayed at various galleries and exhibits.

8. During 1967 and 1968 petitioner reported income from sales of her paintings of \$350.00 and \$200.00 respectively. Although she had been painting for several years prior and subsequent to the years at issue, she never produced a profit from her painting activities.

9. No documentation was submitted to substantiate the business expenses at issue.

CONCLUSIONS OF LAW

A. That the adjustments to petitioner's travel expenses incurred in connection with her participation in the Zionist Organization of America Convention during 1967 is sustained since petitioner has not met her burden of proof, required pursuant to section 689(e) of the Tax Law, to show that the expenses claimed were, in fact, incurred, or that she had a proper basis for deducting expenses of this nature.

B. That the adjustments to petitioner's claimed business expenses for the years 1967 and 1968 are sustained since her painting related activities were not engaged in for profit within the meaning and intent of section 183 of the Internal Revenue Code and Article 22 of the Tax Law.

C. That the petition of Rebecca Weisberg is denied and the notices of deficiency dated June 30, 1969 and September 27, 1971 are sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER