

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stephen & Barbara Weisglass :
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. :

AFFIDAVIT OF MAILING

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

Stephen & Barbara Weisglass
127 Dune Rd.
Westhampton Beach, NY 11978

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.

Robert Brink

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Stephen & Barbara Weisglass :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
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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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Sol Greenbaum the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

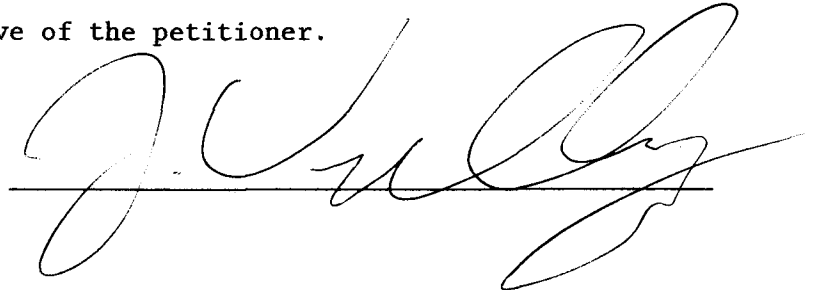
Mr. Sol Greenbaum
Levy & Co.
55 West 42 St.
New York, NY 10036

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.

Patricia Bank



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

October 3, 1980

Stephen & Barbara Weisglass
127 Dune Rd.
Westhampton Beach, NY 11978

Dear Mr. & Mrs. Weisglass:

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
Sol Greenbaum
Levy & Co.
55 West 42 St.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
STEPHEN WEISGLASS and BARBARA WEISGLASS : DECISION
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax Under Article 22 of the :
Tax Law for the Year 1973. :

Petitioners, Stephen Weisglass and Barbara Weisglass, 127 Dune Road, West Hampton Beach, New York 11978, 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 1973 (File No. 18310).

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 February 13, 1980 at 9:15 A.M. Petitioners, Stephen Weisglass and Barbara Weisglass, appeared by Sol Greenbaum, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy., Esq., of counsel).

ISSUE

Whether, and if so to what extent, petitioners are properly entitled to deductions for contributions and miscellaneous deductions for the year 1973.

FINDINGS OF FACT

1. Petitioners, Stephen Weisglass and Barbara Weisglass, timely filed a joint New York State Income Tax Resident Return for the year 1973.

2. On October 29, 1976, the Audit Division issued a Statement of Audit Changes to petitioners wherein their itemized deductions claimed for contributions of \$610.00 and miscellaneous deductions of \$10,391.00, were disallowed in full since petitioners failed to appear for a scheduled audit. Accordingly, a Notice of Deficiency was issued against petitioners on February 28, 1977 asserting additional personal income tax of \$1,650.15, plus interest of \$355.67, for a total due of \$2,005.82.

3. During the hearing petitioners submitted checks into evidence totaling \$510.00 which were purported to establish expenditures for charitable donation purposes. No documentary evidence was submitted to verify the remaining balance claimed of \$100.00 which was categorized on petitioners' return as "various organized charities". Petitioners contended that this deduction was comprised of various out-of-pocket donations made over the course of the year at issue. Subsequent to reviewing the documentation presented, the Audit Division conceded the entire contribution deduction issue.

4. Petitioners' "miscellaneous deductions" claimed of \$10,391.00 was comprised of several separate and distinct deductions as follows:

<u>Nature of Deduction</u>	<u>Amount Claimed</u>
Tax preparation	\$ 325.00
Investors expense, dues & subscriptions	362.00
Business lunches, dinners and out-of-town travel	5,369.00
Travel & auto expenses	2,593.00
Telephone	482.00
Use of facilities	<u>1,260.00</u>
Total	\$10,391.00

5. Petitioners submitted a check for \$325.00 paid to Jacques M. Levy & Co., the firm petitioners' representative is associated with, as evidence of their deduction claimed for "tax preparation".

6. In support of the deduction claimed for "investors expense, dues and subscriptions" petitioners submitted checks evidencing a proper deduction of \$118.71.

7. During the year at issue petitioner Stephen Weisglass was employed as a registered representative with Bear Sterns & Co., a stock brokerage firm in New York City. He contended that the deduction claimed for "business lunches, dinners and out-of-town travel" of \$5,369.00 consisted of such expenditures incurred in connection with said employment. To support such deduction petitioner submitted an "Analysis of Diary" worksheet listing amounts expended on various days under the separate categories of breakfast, lunch, dinner, cocktails and miscellaneous. No other documentation was submitted in support of this deduction.

A witness for the Audit Division testified that petitioner submitted a diary for review, prior to this hearing. However, no diary or original book of account was submitted during the hearing held herein.

8. In support of "travel and auto expenses" claimed of \$2,593.00, petitioner submitted a group of checks totaling \$2,788.91. These checks were all made payable to gasoline companies and parking garages. No documentation was submitted to evidence the extent of the business use of petitioner's automobile or the nature of such purported business use.

9. In support of "telephone" expenses claimed of \$482.00, petitioner submitted several checks totaling \$482.02. Petitioner contended that these checks represented payment of his business home telephone bills rather than those of his personal telephone, but review of said checks indicate that during the months July through October 1973, two separate bills were paid on or about the same date, both of which petitioner now claims a deduction for.

10. Petitioner's claimed expense for "use of facilities" of \$1,260.00 pertains to a deduction claimed for an office maintained at home. Petitioner contended that he and his wife resided in a four room apartment during the year at issue and that this deduction was computed on the basis of one sixth of the total rent. In support of this deduction petitioner submitted eleven checks totaling \$6,605.00, which he purported were rent payments to a rental agent. Review of said checks show monthly payments during January, February and March 1973 of \$735.00 each to Douglas Elliman & Co, while those payments for the balance of the year were \$550.00 per month, paid to CHG Inc., Agent. No explanation was offered for the apparently lesser rent paid during the latter part of the year. Petitioner contended that one room was used exclusively for research. Additionally, petitioner submitted checks totaling \$166.02 in payment of his electric bills of which he contends that he is entitled to deduct a pro rata share. No information was disclosed with reference to whether petitioner was required to maintain a home office as a condition of his employment.

11. No evidence was submitted to establish whether, and if so to what extent, petitioner was reimbursed for the business expenses he purported to have incurred during the year at issue.

CONCLUSIONS OF LAW

A. That petitioners are properly entitled to a deduction for contributions of \$610.00 since based on documentation presented, this issue was conceded by the Audit Division.

B. That petitioners are properly entitled to a deduction claimed for "tax preparation" of \$325.00.

C. That based on the evidence submitted, petitioners are properly entitled to a deduction for "investors expense, dues and subscriptions" of \$118.71.

D. That Treasury Regulation 1.274-5(c) (2) provides that:

"To meet the "adequate Records" requirements of section 274(d), a taxpayer shall maintain an account book, diary, statement of expense or similar record and documentary evidence which, in combination, are sufficient to establish each element of an expenditure."

Since petitioners herein have not complied with said requirements, deductions claimed for "business lunches, dinners and out-of-town travel" of \$5,369.00 and "travel and auto expenses" of \$2,593.00 are denied in full.

E. That deductions claimed for "telephone" of \$482.00 and "use of facilities" of \$1,260.00 are denied in full since petitioners have not sustained their burden of proof required under section 689(e) of the Tax Law to show the extent, if any, that they are properly entitled to such deductions.

F. That the petition of Stephen Weisglass and Barbara Weisglass is granted to the extent provided in Conclusions of Law "A, B and C" supra and that said petition is, in all other respects, denied.

G. That the Audit Division is hereby directed to modify the Notice of Deficiency dated February 28, 1977 to be consistent with the decision rendered herein.

DATED: Albany, New York

OCT Q 3 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER