

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

John H. & Dorothy B. Williams :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon John H. & Dorothy B. Williams, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


John H. & Dorothy B. Williams
71 Trumbull Rd.
Manhasset, NY 11090

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.

Freddie Bank



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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Edward C. Keller 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. Edward C. Keller
5 Highland Rd.
Glen Cove, NY 11542

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.

Robert Bark

[Signature]

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

October 3, 1980

John H. & Dorothy B. Williams
71 Trumbull Rd.
Manhasset, NY 11090

Dear Mr. & Mrs. Williams:

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
Edward C. Keller
5 Highland Rd.
Glen Cove, NY 11542
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN H. WILLIAMS and DOROTHY B. WILLIAMS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioners, John H. Williams and Dorothy B. Williams, 100 Colonial Parkway, Manhasset, New York 11030 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. 18947).

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 January 9, 1980 at 1:15 P.M. Petitioner John H. Williams appeared pro se and for his wife. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether petitioners are entitled to a rental loss sustained from property rented to a relative.

II. Whether travel expenses incurred, which are attributable to petitioner Dorothy B. Williams' travel while accompanying her husband on business trips, are deductible expenses.

FINDINGS OF FACT

1. Petitioners, John H. Williams and Dorothy B. Williams, timely filed a joint New York State Income Tax Resident Return for the year 1974.

2. On December 6, 1976 the Audit Division issued a Statement of Audit Changes to petitioners wherein, as the result of an audit, travel expenses which were attributable to petitioner, John H. Williams' wife accompanying him on two business trips, were disallowed as nondeductible personal expenditures. Additionally, a rental loss claimed of \$3,879.00, which was incurred in the operation of petitioners' one family dwelling located at 18 Prospect Avenue, Sea Cliff, New York, was disallowed on the basis that said property was not operated for profit since it was rented to petitioners' daughter for less than the fair market value. In conjunction with this adjustment petitioners were given credit for that portion of the interest expense and real estate taxes attributable to said property, which was in excess of rent receipts, and not claimed elsewhere on their return. The adjustment per said statement to a second parcel of rental property was not contested by petitioners. Accordingly, a Notice of Deficiency was issued against the petitioners on May 23, 1977 asserting additional personal income tax of \$579.30, plus interest of \$103.61, for a total due of \$682.91.

3. During the year 1974 petitioner John H. Williams, who by profession was an accountant, attended two meetings of the American Institute of Certified Public Accountants. One was held in Bermuda from September 22 through 26, while the other was held in Seattle, Washington from October 9 through 15. Petitioner's wife accompanied him on both of these trips.

4. During the course of the hearing, petitioner John H. Williams rendered testimony to the effect that the Bermuda trip consisted of activities which were predominantly of a social, rather than business nature. He contended that the participants were requested to bring their wives to this meeting to "lighten the atmosphere". While in Bermuda he was invited to a dinner at the

home of one of his employer's prominent clients, which he contended would not have taken place had his wife not accompanied him.

5. During the Seattle meeting, petitioner and his wife met socially with several people. Petitioner contended that these individuals were business associates, but offered no evidence with respect to the business relationships between him and these individuals, or to show the business purpose served by his wife's attendance.

6. During 1969 petitioner John H. Williams purchased a one-family house located at 18 Prospect Avenue, Sea Cliff, New York. On February 1, 1970 petitioner leased the property to his daughter and son-in-law for \$250.00 per month, said amount constituting fair market value at that time.

7. During 1974, as the result of marital and financial problems, petitioner's daughter paid total rent of only \$700.00. Petitioner accepted this sum and made no attempt to collect the balance of the unpaid rent.

CONCLUSIONS OF LAW

A. That the rental loss sustained on the Sea Cliff, New York property is deemed to be a loss sustained from a nonprofit activity. Accordingly, such loss is not deductible pursuant to section 183 of the Internal Revenue Code, Treasury Regulation 1.183, and Article 22 of the Tax Law.

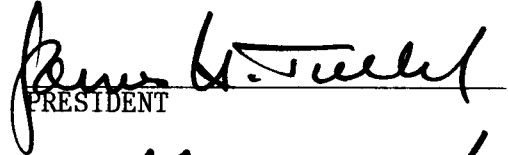
B. That petitioner John H. Williams has not sustained his burden of proof, required pursuant to section 689(e) of the Tax Law, to show that his wife's presence on the business trips to Bermuda and Seattle, Washington had a bona fide business purpose. Accordingly, the travel expenses claimed which were attributable to her are deemed nondeductible, personal expenditures within the meaning and intent of section 162(a) of the Internal Revenue Code, Treasury Regulation 1.162-2, and Article 22 of the Tax Law.

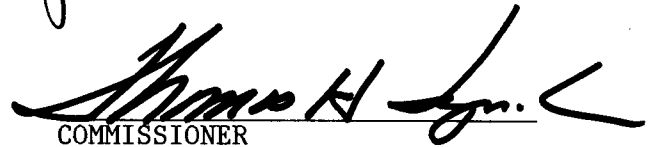
C. That the petition of John H. Williams and Dorothy B. Williams is denied and the Notice of Deficiency dated May 23, 1977 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER