

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
Herbert Canter :  
: 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 :  
1975.

---

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 20th day of November, 1981, he served the within notice of Decision by certified mail upon Herbert Canter, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Herbert Canter  
12 Sunny Lane  
Monroe, NY 10950

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  
20th day of November, 1981.

*Connie A. Haylund*

*J. Vredenburg*

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

November 20, 1981

Herbert Canter  
12 Sunny Lane  
Monroe, NY 10950

Dear Mr. Canter:

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	:	
HERBERT CANTER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the year 1975.	:	

---

Petitioner, Herbert Canter, 12 Sunny Lane, Monroe, New York 10950, 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 1975 (File No. 21307).

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 February 26, 1981 at 1:15 P.M. Petitioner Herbert Canter appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is entitled to automobile and travel expenses of \$4,325.00.

FINDINGS OF FACT

1. Petitioner, Herbert Canter and Dolores Canter his wife, timely filed a New York State Combined Income Tax Return for the year 1975, on which petitioner Herbert Canter deducted travel and auto expenses of \$4,325.00 and Dolores Canter deducted medical and dental expenses of \$2,610.00.

2. On November 28, 1977 the Audit Division issued a Notice of Deficiency for \$161.74, plus interest, along with an explanatory Statement of Audit Changes, on which travel and auto expenses were reduced from \$4,325.00 to

\$2,162.50, resulting in a deficiency against petitioner Herbert Canter of \$128.66 plus interest. In addition, medical and dental expenses were reduced from \$2,610.00 to \$1,954.50, which resulted in a deficiency against Dolores Canter of \$33.08, plus interest. On October 20, 1978 Dolores Canter signed a Withdrawal of Petition and Discontinuance of Case, accepting a final disposition of the deficiency of \$31.97 plus interest of \$6,71. Accordingly, the adjustments to medical and dental expenses are not at issue.

3. Petitioner Herbert Canter was employed as District Manager for the National Federation of Independent Business (NFIB) during the year 1975. As such, his principle activity was to solicit memberships in a specific territory, which included Bergen County in New Jersey and the New York counties of upper Westchester, Putnam, Dutchess, Orange and Rockland.

4. Petitioner Herbert Canter was compensated on a commission basis and was not reimbursed for any expenses incurred. Petitioner contended that he traveled 35,000 business miles in soliciting memberships during the year 1975 and computed his auto expense deduction as follows:

15,000 miles at 15¢	\$2,250.00
20,000 miles at 10¢	2,000.00
Parking fees and tolls	75.00
Total	<u>\$4,325.00</u>

5. Petitioner, Herbert Canter contended that he owned two automobiles and used one strictly for business travel. Petitioner submitted an assortment of bills, receipts and cancelled checks. However, many of these items could not be distinguished as expenses for his personal automobile or as expenses for his business automobile. In addition, the accuracy and/or evidential value of the speedometer reading shown on repair bills was questionable. A repair bill (#17067) dated December 3, 1975 indicated a speedometer reading of 95,026;

whereas, a repair bill for new tires (#25926) dated December 1, 1975 indicated a speedometer reading of 95,500.

6. Petitioner Herbert Canter did not maintain a diary, or log of his business activities and travel during the year 1975. No documentary evidence was submitted establishing the total number of business miles incurred by petitioner during the year 1975.

CONCLUSIONS OF LAW

A. That tax deductions depend upon clear statutory provisions, and the burden is upon the taxpayer to establish a right to them (Matter of Grace v. New York State Tax Commission, 37 N.Y.2d 193).

B. That petitioner Herbert Canter has failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, in establishing that he was entitled, within the purview of the Internal Revenue Code, and Article 22 of the Tax Law, to automobile expenses greater than those allowed by the Audit Division.


C. That the petition of Herbert Canter is denied and the Notice of Deficiency issued November 28, 1977 is sustained to the extent as it pertains to petitioner Herbert Canter in the amount of \$128.66, plus interest lawfully owing.

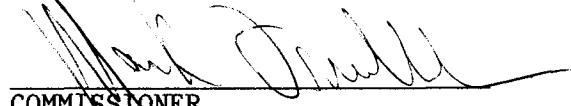
DATED: Albany, New York

NOV 20 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER