

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Robert & Martha Dinerstein :

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 9th day of January, 1981, he served the within notice of Decision by certified mail upon Bernard Schulman 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. Bernard Schulman  
29 W. 57th St.  
New York, NY 10019

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  
9th day of January, 1981.

*Cornelia G. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

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Robert & Martha Dinerstein :

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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 9th day of January, 1981, he served the within notice of Decision by certified mail upon Robert & Martha Dinerstein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert & Martha Dinerstein  
5 Riverside Dr., Apt. 4-A  
New York, NY 10023

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  
9th day of January, 1981.

*Connie A. Hagelund*

*J. Vredenburg*

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

January 9, 1981

Robert & Martha Dinerstein  
5 Riverside Dr., Apt. 4-A  
New York, NY 10023

Dear Mr. & Mrs. Dinerstein:

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  
Bernard Schulman  
29 W. 57th St.  
New York, NY 10019  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ROBERT DINERSTEIN and MARTHA DINERSTEIN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1973.	:	

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Petitioners, Robert Dinerstein and Martha Dinerstein, 5 Riverside Drive, New York, New York 10023, 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. 16371).

On May 23, 1980, petitioner informed the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file, along with a brief and other material subsequently submitted. After due consideration of the record, the Commission renders the following decision.

ISSUES

I. Whether petitioner Martha Dinerstein is entitled to Educational expenses under section 162 of the Internal Revenue Code.

II. Whether the deficiency should be cancelled due to delays by the Department of Taxation and Finance in proceeding with this matter.

FINDINGS OF FACT

1. Petitioners, Robert Dinerstein and Martha Dinerstein, timely filed a joint New York State Income Tax Resident Return for the year 1973, on which an education expense of \$5,013.00 was deducted as a miscellaneous deduction.

2. On May 24, 1976, the Audit Division issued a Notice of Deficiency against the petitioners, Robert Dinerstein and Martha Dinerstein, for 1973 in the amount of \$751.95, plus interest of \$118.82, along with an explanatory Statement of Audit Changes, on which educational expenses of \$5,013.00 were disallowed.

3. Petitioner Martha Dinerstein was employed by the New York State Consumer Protection Board (the Board) from mid-1970 through late 1972, first, as Executive Assistant to the Director and then as Acting Director. Petitioner was principally responsible for monitoring and reviewing compliance of corporations doing business in New York State. She dealt with state laws regulating corporate advertising and marketing practices and with corporations and government agencies concerning proposed legislation in this area.

4. Petitioner Martha Dinerstein worked closely with the insurance, banking and the consumer services industries. She participated in establishing standards for fair advertising and marketing practices and in planning areas of concentration for further remedial efforts by the Board.

5. Sometime in 1972, petitioner Martha Dinerstein determined that she could improve her skills if she took graduate courses which would increase her knowledge of current marketing and planning concepts. Petitioner resigned from her position with the Board, enrolled at Columbia Business School and participated in courses leading to a MBA degree, which was awarded in December 1973.

6. The petitioners did not submit evidence indicating the specific name and descriptions of the courses taken by petitioner Martha Dinerstein during the year 1973. An affidavit signed by petitioner Martha Dinerstein refers to them as "courses in the marketing field".

7. Sometime in 1974, petitioner Martha Dinerstein secured a position at Chase Manhattan Bank as a marketing executive in the Institutional Banking Division.

8. The record does not contain, and petitioners did not submit, information and/or evidence establishing the exact date petitioner resigned from the Board, the exact date she commenced her studies at Columbia Business School, and the exact date she became employed at Chase Manhattan Bank.

9. Petitioners contended that the deficiency should be cancelled due to the long delay by the Department of Taxation and Finance in proceeding with this matter.

10. The Notice of Deficiency was issued on May 24, 1976 with a subsequent timely filed petition for a hearing. A conference was held with the petitioner on August 17, 1977. Petitioners filed a Notice of Motion for Default with the State Tax Commission on February 28, 1978. The State Tax Commission issued a Short Form Order on September 1, 1978 denying petitioners' Motion For Default. This matter was then scheduled for a hearing on March 14, 1980 and was adjourned pursuant to the petitioners' request. This matter was rescheduled for April 21, 1980 and adjourned by petitioners for the purpose of having the matter decided on submission. Petitioners submitted the matter to the State Tax Commission on May 23, 1980.

#### CONCLUSIONS OF LAW

A. That petitioners, Robert Dinerstein and Martha Dinerstein, have failed to sustain the burden of proof as required by section 689(e) of the Tax Law in establishing that the courses of study were related to petitioner's employment; that the courses of study maintained or improved petitioner's skills; and that her suspension of employment was for a temporary period, the

duration of which would ordinarily be for one year or less (United States Treasury Regulation 1.162-5, Rev. Rul. 68-591, 1968-2 C.B. 73).

B. That petitioners, Robert Dinerstein and Martha Dinerstein, have not demonstrated that they were entitled to a deduction of educational expenses of \$5,013.00 in accordance with the meaning and intent of section 162 of the Internal Revenue Code and Article 22 of the Tax Law.

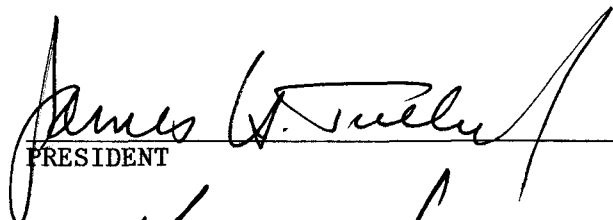
C. That the record does not indicate that the actions or inactions of the Department of Taxation and Finance have unduly prejudiced or adversely affected petitioner's position in this matter; nor is there any evidence or indication, of a denial of due process.

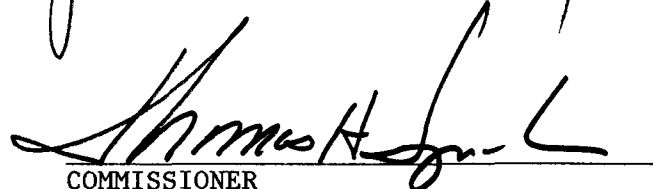
D. That the petition of Robert Dinerstein and Martha Dinerstein is denied and the Notice of Deficiency issued May 24, 1976 is sustained, together with such additional interest as may be lawfully owing.

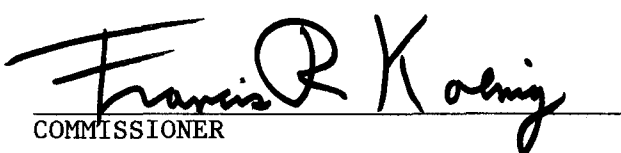
DATED: Albany, New York

STATE TAX COMMISSION

JAN 09 1981

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER