

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Enoch Gordis :  
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 :  
1976.

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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 11th day of December, 1981, he served the within notice of Decision by certified mail upon Enoch Gordis, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Enoch Gordis  
372 Central Park W., Apt. 17C  
New York, NY 10025

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  
11th day of December, 1981.

*Bernice D. Haglund*

*J. Vredenburg*

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

December 11, 1981

Enoch Gordis  
372 Central Park W., Apt. 17C  
New York, NY 10025

Dear Dr. Gordis:

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

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In the Matter of the Petition	:	
of	:	
ENOCH GORDIS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1976.	:	

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Petitioner, Enoch Gordis, 372 Central Park West, Apt. 17C, New York, New York 10025, 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 1976 (File No. 27346).

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 June 19, 1981 at 9:15 A.M. Petitioner appeared pro se. the Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner is properly entitled to a deduction for business use of a portion of his personal residence.

FINDINGS OF FACT

1. Petitioner, Enoch Gordis, timely filed a New York State Income Tax Resident Return for the year 1976 whereon he claimed a deduction of \$600.00 for business use of a portion of his personal residence (home office).

2. On August 15, 1978 the Audit Division issued a Statement of Audit Changes to petitioner wherein it disallowed his claimed home office expense. Furthermore, an additional adjustment of \$90.00 to miscellaneous deductions was made, but since such adjustment was not contested by petitioner

it is therefore not at issue herein. Accordingly, a Notice of Deficiency was issued against petitioner on March 5, 1979 asserting additional personal income tax of \$88.77, plus interest of \$14.19, for a total due of \$102.96.

3. During the year at issue petitioner was a physician employed by Mt. Sinai Hospital, in Elmhurst, New York. He was the Director of the Comprehensive Alcoholism Treatment Program and a professor of clinical medicine at the Mt. Sinai School of Medicine. His duties consisted of administration, patient care and teaching medical students, residents and interns.

4. Petitioner claimed expenses attributable to one half of one room of an apartment, which he shared with another individual. The remaining half room was used by the other individual. Petitioner used his portion of such room for the preparation of teaching material, lectures and grants.

5. Substantiation of the expenses attributable to petitioner's claimed home office deduction is not at issue. The sole issue herein is whether petitioner properly qualified for such deduction.

#### CONCLUSIONS OF LAW

A. That section 280A(a) of the Internal Revenue Code provides that:

General Rule - Except as otherwise provided in this section, in the case of a taxpayer who is an individual or an electing small business corporation, no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence.

B. That section 280A(c)(1) provides that:

Subsection (a) shall not apply to any item to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis --

(A) as the taxpayer's principal place of business,

(B) as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business, or

(C) in the case of a separate structure which is not attached to the dwelling unit, in connection with the taxpayer's trade or business.

In the case of an employee, the preceding sentence shall apply only if the exclusive use referred to in the preceding sentence is for the convenience of his employer.

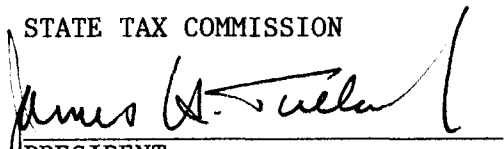
C. That petitioner has not met the requirements set forth in section 280A(c)(1) of the Internal Revenue Code. Accordingly, he is not entitled to a deduction for business use of a portion of his personal residence.

D. That the petition of Enoch Gordis is denied and the Notice of Deficiency dated March 5, 1979 is sustained together with such additional interest as may be lawfully owing.

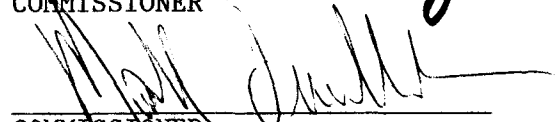
DATED: Albany, New York

DEC 11 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER