

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John C. Hamell :

: 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 5th day of June, 1981, he served the within notice of Decision by certified mail upon John C. Hamell, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John C. Hamell
3671 Hudson Manor Terrace, Apt. 5A
Bronx, NY 10463

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
5th day of June, 1981.

Annunzio P. Haydeland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
John C. Hamell :

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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 :
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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Burton Cohen 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. Burton Cohen
535 Fifth Ave.
New York, NY 10017

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
5th day of June, 1981.

Armin A. Haglund

J. Vredenburg

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

June 5, 1981

John C. Hamell
3671 Hudson Manor Terrace, Apt. 5A
Bronx, NY 10463

Dear Mr. Hamell:

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
Burton Cohen
535 Fifth Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOHN C. HAMELL	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	

Petitioner, John C. Hamell, 3671 Hudson Manor Terrace, Bronx, New York 10643, 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. 15626).

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 May 14, 1980 and October 24, 1980 at 9:15 A.M. and 10:45 A.M., respectively. Petitioner appeared with Burton Cohen, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner is properly entitled to greater deductions for medical and dental expenses, miscellaneous itemized deductions and employee business expenses, than those allowed by the Audit Division.

FINDINGS OF FACT

1. Petitioner, John C. Hamell, filed a New York State Income Tax Resident Return for the year 1974 whereon he claimed deductions for medical and dental expenses of \$687.00, miscellaneous itemized deductions of \$3,255.00 and employee business expenses of \$3,461.00.

2. On November 26, 1975, the Audit Division issued a Statement of Audit Changes to petitioner wherein, "as a result of audit", the following adjustments were made:

	<u>Claimed</u>	<u>Substantiated</u>	<u>Adjustment</u>
Medical	\$ 687.00	\$ 85.00	\$ 602.00
Miscellaneous	3,255.00	1,552.00	1,703.00
Employee Business Expenses	3,461.00	1,602.00	1,859.00
Total Adjustments			<u>\$4,164.00</u>

Accordingly, a Notice of Deficiency was issued against petitioner on June 28, 1976 asserting additional personal income tax of \$385.88, plus interest of \$39.45, for a total due of \$425.35.

3. During the hearing petitioner submitted documentation evidencing bona fide medical and dental expenditures during 1974 of \$362.34. The amount claimed for "Hospital" of \$654.00 was conceded by petitioner.

4. The adjustment of \$1,703.00 to petitioner's claimed miscellaneous itemized deductions was comprised of separate adjustments to various, categorically distinct deductions as follows:

	<u>Claimed</u>	<u>Allowed</u>	<u>Adjustment</u>
Depreciation	\$260.00	\$42.00	\$ 218.00
Storage of equipment during studies abroad	407.00	-0-	407.00
Gifts to employees and hosts	28.00	-0-	28.00
Business entertainment expenses	700.00	-0-	700.00
Postage, stationery & European telephone	134.00	-0-	134.00
Repairs to musical instruments and equipment	188.00	88.00	100.00
Music, profession and office supplies	157.00	41.00	116.00
Total Adjustment			<u>\$1,703.00</u>

5. During the year at issue, petitioner was employed as a music teacher at Bronx Community College, where in addition to teaching classroom courses such as music appreciation and music history, he conducted the orchestra and

choir. In addition to his wages derived from Bronx Community College, petitioner derived \$635.25 from occasional substituting at other schools. No other income was derived by petitioner during the year 1974.

6. From August 7, 1974 through September 1975, petitioner was on sabbatical leave. He spent such leave in Europe studying music with a prominent conductor. Many of the deductions at issue herein were incurred in Europe while on sabbatical leave. Petitioner contended that such deductions are properly deductible as educational expenses since his travel and study abroad improved his skills as a music teacher and conductor. He further contended that such studies lead to his receiving a doctoral equivalency and ultimately a promotion from assistant to associate professor.

7. Petitioner claimed a depreciation deduction for several items purchased prior to the year at issue consisting of records and tapes, a portable cassette recorder, cassette tape deck and microphones, an FM radio and a calculator. He maintained that such items were used solely in connection with his employment. No documentation was presented to evidence the purchase of said items. As depreciation of purchases during 1974, petitioner claimed \$21.00. Said amount was computed by dividing such purchases of \$84.40 by an estimated life of four years. Proper evidence was submitted with respect to the 1974 purchases.

8. In support of petitioner's claimed deduction for "storage of equipment during studies abroad" of \$407.00, petitioner submitted two checks to V. Santini, Inc. totaling \$296.88. No evidence was submitted to establish that said payee was a storage company or that such purported storage space was utilized for musical equipment and instruments. Further, no information was offered with respect to the disposition of petitioner's personal household effects since he terminated his interest in his apartment prior to his traveling abroad.

9. Proper evidence was submitted during the hearing with respect to the deduction claimed for "gifts to employees and hosts" of \$28.00.

10. With respect to petitioner's deduction claimed for "business entertainment expenses" of \$700.00, he submitted a schedule, diary and various receipts evidencing his entitlement to a portion of such deductions.

11. Petitioner submitted receipts documenting his expenditures claimed for "postage, stationery and European telephone" of \$134.00, however no business purpose was established relative to such deduction.

12. Petitioner submitted documentary evidence to establish that he is properly entitled to the full deduction of \$188.00 claimed for "repairs to musical instruments and equipment". The adjustment of \$100.00 to such deduction was related to a repair on petitioner's violin.

13. Review of documentation submitted with respect to petitioner's deduction claimed for "music, professional and office supplies" of \$157.00 indicates that the adjustment of \$116.00 made by the Audit Division was with respect to the purchase of a "Kart-A-Bag" item of luggage. No business purpose was explained for the purchase of such item.

14. "Employee business expenses" claimed by petitioner of \$3,461.00 were mostly incurred in Europe and were comprised of five separate deductions as follows: airplane, \$777.00; railroad, \$445.00; meals and lodging, \$574.00; street cars and subways, \$127.00; and automobile, \$1,538.00. Although petitioner presented some documentation in support of the above stated deductions, no business relationship could be determined for the bulk of said deductions claimed.

CONCLUSIONS OF LAW

A. That the adjustment to medical and dental expenses is sustained since petitioner's substantiated deductions were less than the 3 percent limitation required pursuant to section 213(a)(1) of the Internal Revenue Code.

B. That the adjustments made by the Audit Division to the following deductions claimed as miscellaneous itemized deductions are hereby sustained since petitioner has failed to satisfy the record keeping requirements of Treasury Regulation 1.274-5 and additionally has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he is properly entitled to greater deductions than those allowed.

<u>Deduction</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Adjustment</u>
Depreciation	\$260.00	\$42.00	\$218.00
Storage of equipment during studies abroad	407.00	-0-	407.00
Postage, stationery and European telephone	134.00	-0-	134.00
Music, professional and office supplies	157.00	41.00	116.00

C. That the adjustment to petitioner's claimed deduction for "business entertainment expenses" is reduced from \$700.00 to \$500.00 based on substantiation submitted.

D. That the adjustment to petitioner's claimed deduction for "gifts to employees and hosts" of \$28.00 is cancelled based on substantiation submitted.

E. That the adjustment of \$100.00 to petitioner's claimed deduction for "repairs to musical instruments and equipment" is cancelled based on substantiation submitted.

F. That although petitioner is properly entitled to deduct those "employee business expenses" which were incurred in Europe while on sabbatical leave as Educational Expenses, since such travel was incurred for the purpose of, and

did in fact improve petitioner's skills as a music teacher, such deductions were not substantiated to an extent greater than that allowed by the Audit Division. Accordingly, the adjustment of \$1,859.00 to petitioner's claimed "employee business expenses" of \$3,461.00 is hereby sustained.

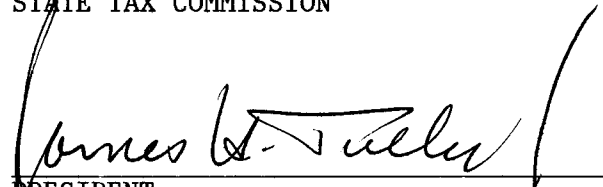
G. That the petition of John C. Hamell is granted to the extent provided in Conclusions of Law "C", "D" and "E", supra, and that said petition is, in all other respects, denied.

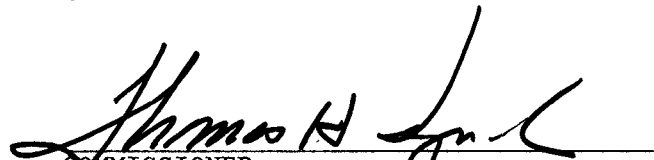
H. That the Audit Division is hereby directed to modify the Notice of Deficiency dated June 28, 1976 to be consistent with the decision rendered herein.

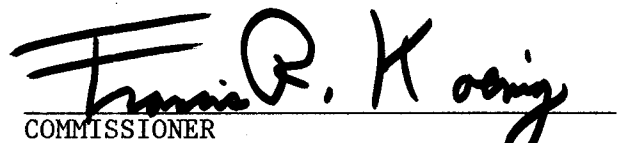
DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER