

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Marvin & Beverly Hundert :
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. :

AFFIDAVIT OF MAILING

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 27th day of November, 1981, he served the within notice of Decision by certified mail upon Marvin & Beverly Hundert, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marvin & Beverly Hundert
1647 W. 5th St.
Brooklyn, NY 11223

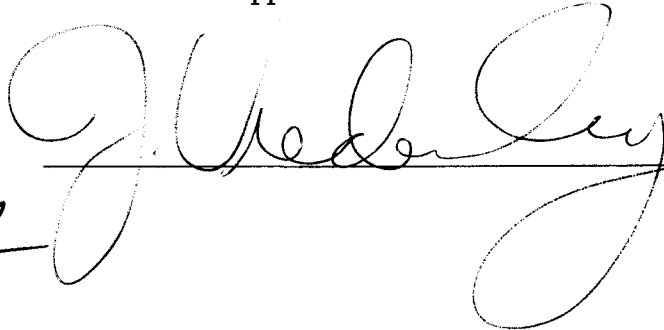
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
27th day of November, 1981.



Jamie A. Haglund



Jay Vredenburg

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

November 27, 1981

Marvin & Beverly Hundert
1647 W. 5th St.
Brooklyn, NY 11223

Dear Mr. & Mrs. Hundert:

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	:	
MARVIN HUNDERT and BEVERLY HUNDERT	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioners, Marvin Hundert and Beverly Hundert, 1647 West 5th Street, Brooklyn, New York 11223, 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. 21468).

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 April 30, 1981 at 2:45 P.M. Petitioner Marvin Hundert appeared pro se, and for his wife, petitioner Beverly Hundert. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioners properly deducted medical and dental expenses of \$5,674.44 and employee business expenses of \$3,612.19.

FINDINGS OF FACT

1. Petitioners, Marvin Hundert and Beverly Hundert, timely filed a joint New York State Income Tax Resident Return for the year 1975, on which medical and dental expenses of \$5,674.44 and employee business expenses of \$3,612.19 were deducted.

2. On November 28, 1977 the Audit Division issued a Notice of Deficiency for \$257.11 plus interest, along with a Statement of Audit Changes and a

Schedule of Audit Adjustments, which indicated that items under audit were "allowed to the extent substantiated by documentary evidence" as follows:

<u>Item</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Adjustment</u>
Medical and Dental Expenses	\$5,674.44	\$3,804.83	\$1,869.61
Employee Business Expenses	3,612.19	1,251.74	2,360.45
Medical Adjustment: 4% of \$2,360.45 =			94.42
Total Adjustments			<u>\$4,324.48</u>

3. Petitioner Marvin Hundert appeared at the Small Claims Hearing of April 30, 1981 with a large assortment of bills, receipts, cancelled checks, etc., which were in total disarray. As such, petitioner experienced difficulty in readily picking out items he wanted to submit into evidence. Accordingly, petitioner was granted a 30-day period in which to submit his material (by mail) in an organized and orderly manner. The Audit Division sent petitioners copies of it's audit worksheets to assist them in their presentation.

4. On June 1, 1981 a handwritten letter was received from petitioner Marvin Hundert, basically recounting the events prior to the Small Claims Hearing of April 30, 1981. However, absolutely no documentary evidence was enclosed or submitted for consideration.

CONCLUSIONS OF LAW

A. That petitioners, Marvin Hundert and Beverly Hundert, have failed to sustain the burden of proof as required by section 689(e) of the Tax Law in establishing that they were entitled, within the purview of the Internal Revenue Code and Article 22 of the Tax Law, to larger deductions than those allowed by the Audit Division.


B. That the petition of Marvin Hundert and Beverly Hundert is denied and the Notice of Deficiency issued November 28, 1977 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

 
COMMISSIONER