

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

John W. & Joanne H. Misener :

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 1972. :

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 23rd day of January, 1981, he served the within notice of Decision by certified mail upon John W. & Joanne H. Misener, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John W. & Joanne H. Misener
164 Redwood Terrace
Williamsville, NY 14221

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
23rd day of January, 1981.

Currie A. Hagelund

J. Vredenburg

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

January 23, 1981

John W. & Joanne H. Misener
164 Redwood Terrace
Williamsville, NY 14221

Dear Mr. & Mrs. Misener:

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	:	
JOHN W. MISENER and JOANNE H. MISENER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1972.	:	

Petitioners, John W. Misener and Joanne H. Misener, 164 Redwood Terrace, Williamsville, New York 14221, 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 1972 (File No. 12726).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One West Genesee Street, Buffalo, New York, on July 9, 1980 at 1:15 P.M. Petitioner John W. Misener appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioners properly claimed a deduction for education expenses on their New York State Personal Income Tax Return for 1972.

FINDINGS OF FACT

1. Petitioners, John W. Misener and Joanne H. Misener, filed a joint New York State Income Tax Resident Return for 1972, on which they deducted \$1,048.22 in education expense.

2. On May 19, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners for 1972, imposing additional personal income tax of \$91.23, plus interest of \$14.32, less a remittance of \$20.53, for a balance

due of \$85.02. This Notice was issued on the grounds that petitioner Joanne H. Misener was not employed or otherwise actively engaged in a trade or business during the period when the educational expenses were incurred, therefore such expenses were not deductible. The Bureau also made other adjustments to petitioners' tax return, which petitioners do not contest and which are not at issue.

3. During and prior to the year at issue petitioner Joanne H. Misener had not worked full-time in the field of teaching since graduating from college with a degree in education majoring in high school secretarial science in 1969. Petitioner Joanne H. Misener had worked as a substitute teacher on occasions. Since full-time teaching positions were not readily available during 1972, petitioner decided to acquire the additional thirty credits required to retain a position as a high school teacher after such a full-time position is secured.

Subsequently, petitioner Joanne H. Misener has worked for Bryant & Stratton Business Institute and a junior college.

CONCLUSIONS OF LAW

A. That teachers frequently incur expenditures in attending college and university courses during their time of practicing their vocation. Where a teacher attends those courses merely because of a personal desire to attain more proficiency or advanced academic standing, it has been generally held that expenses incurred in attending such courses are considered personal and hence, not deductible as an ordinary and necessary business expense. If, however, the educational expenditures were to maintain or improve skills, to increase proficiency or advance in academic standings which is required as a prerequisite to the retention of teaching status as a member of a teaching staff of a school, such expenses have been allowed as ordinary and necessary expenses.

B. That petitioner Joanne H. Misener was not a full-time member of a teaching staff of a school that required advanced academic standing for retention of employment during the year at issue. Therefore, such educational expenditures are considered personal and hence, not deductible as an ordinary and necessary business expense.

C. That the petition of John W. Misener and Joanne H. Misener is denied and the Notice of Deficiency issued May 19, 1975 sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JAN 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER