

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Onofrio Paccione

:

:

: 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

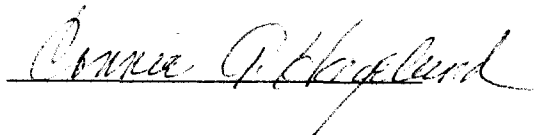
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of November, 1981, he served the within notice of Decision by certified mail upon Onofrio Paccione, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Onofrio Paccione
15 Warren Rd.
Croton-on-Hudson, NY 10520

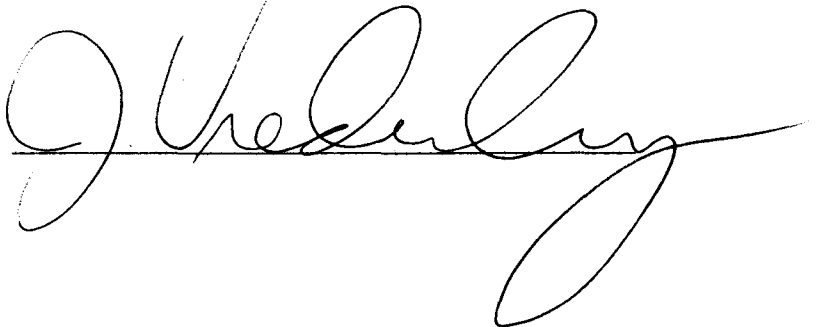
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
6th day of November, 1981.



Connie P. Higdon



Jay Vredenburg

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Tax under Article 22 of the Tax Law for the Year :
1973 :
:

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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Jay Chadwich the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

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
6th day of November, 1981.

Carmel P. Haglund

J. H. G. L.

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

November 6, 1981

Onofrio Paccione
15 Warren Rd.
Croton-on-Hudson, NY 10520

Dear Mr. Paccione:

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
Jay Chadwich
Gassman & Gassman
500 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ONOFRIO PACCIONE :
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1973. :

Petitioner, Onofrio Paccione, 15 Warren Road, Croton-on-Hudson, New York 10520, 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. 18758).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 8, 1981 at 2:45 P.M. Petitioner, Onofrio Paccione, appeared by Jay Chadwick of the accounting firm of Gassman & Gassman. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner is entitled to deduct medical and dental expenses totaling \$2,228.00.

II. Whether petitioner is entitled to a miscellaneous deduction for legal fees of \$8,500.00.

FINDINGS OF FACT

1. Petitioner, Onofrio Paccione, and his wife, Veronica Paccione, timely filed separate New York State resident income tax returns for the year 1973 on combined form IT-208. Onofrio Paccione claimed on his portion of the return

all of the itemized deductions, which included medical and dental expenses of \$2,228.00 and miscellaneous expenses of \$8,500.00.

2. On February 28, 1977 the Audit Division issued to petitioner a Notice of Deficiency asserting that additional personal income tax of \$1,138.64 was due together with interest. Said Notice of Deficiency was based on an explanatory Statement of Audit Changes wherein medical and dental expenses of \$2,228.00 and legal fees of \$8,500.00 were disallowed as unsubstantiated "[S]ince you failed to appear for audit of your 1973 tax return on final appointment...".

3. At the hearing held herein petitioner, in an effort to substantiate medical and dental expenses, submitted statements from various doctors, dentists, hospitals and a psychologist. Only one of the statements, in the amount of \$150.00, was substantiated by cancelled check. A second statement, in the amount of \$550.00, was partially substantiated by cancelled checks in the amount of \$160.00. Four additional statements, in the amounts of \$1,290.00, \$25.00, \$20.00 and \$38.00, indicated that the amounts billed were paid during the tax year in question. The remaining seven statements were not supported by cancelled check nor was there any indication that the amounts billed were paid during the year 1973.

4. Petitioner's claimed medical and dental expense deduction of \$2,228.00 also included deductions for medicine and drugs of \$645.00 and medical travel of \$175.00. No documentary evidence or testimony was offered with respect to the deduction for medical travel. The evidence presented to substantiate medicine and drugs did not indicate the nature of the item purchased (cancelled check payable to New City Drug) or a breakdown of the items purchased (statement from Robbins Pharmacy indicating purchase of drugs, vitamins, food supplements, and sick room supplies).

5. The claimed legal expense deduction of \$8,500.00 was actually comprised of a \$3,250.00 fee paid to the accounting firm of Gassman & Gassman for special work, conferences, research, tax planning and advisory services and \$5,250.00 in attorney fees. While the \$3,250.00 fee charged by Gassman & Gassman was substantiated as paid during 1973, no documentary evidence was adduced to substantiate the existence or payment of \$5,250.00 in attorney's fees. Petitioner contended that both the accountant's fee and attorney's fee were incurred as the result of a legal dispute he was having with a co-shareholder in a corporation wherein each had brought suit against the other. No evidence was presented as to the nature of the suit or countersuit brought by petitioner. Petitioner was allowed additional time after the conclusion of the hearing held herein to submit further documentation and information in support of the claimed legal expense deduction. No additional documentation or information was submitted.

CONCLUSIONS OF LAW

A. That pursuant to Finding of Fact "3", supra, petitioner has substantiated by acceptable documentary evidence total medical and dental expenses of \$1,683.00. Since the medical and dental expense deduction is limited to the amount by which said expenses exceed 3 percent of adjusted gross income, petitioner is allowed a net medical and dental expense deduction of \$493.00 (\$1,683 - \$1,190). That the remaining portion of the medical and dental expense deduction is disallowed since petitioner has failed to show that the expenses were paid during 1973 and in the case of the claimed deduction for medicine and drugs, petitioner has not shown a breakdown as to the nature of the items purchased. Accordingly, petitioner has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law.

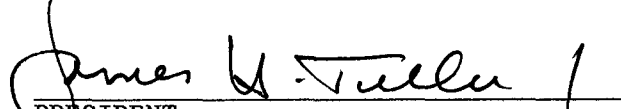
B. That disallowance of the legal expense deduction for accountant's fees and attorney's fees is sustained as petitioner has failed to meet the burden of proof to show that the fees were ordinary and necessary trade or business expenses deductible pursuant to section 162 of the Internal Revenue Code or that said fees were ordinary and necessary expenses relating to the production of income deductible pursuant to section 212 of the Internal Revenue Code. Additionally, the attorney's fee of \$5,250.00 must be disallowed since petitioner has failed to substantiate payment of said fee.


C. That the petition of Onofrio Paccione is granted to the extent indicated in Conclusion of Law "A", supra, and that, except as so granted, the petition is in all other respects denied.

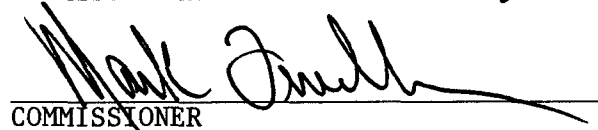
DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER