

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Daniel & Priscilla Spensieri :

: 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 _____

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 Daniel & Priscilla Spensieri, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel & Priscilla Spensieri
Lake Rd., RD #2
Katonah, NY 10536

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.

Connie A. Hayward

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Daniel & Priscilla Spensieri :

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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 :
1976

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 Philip M. Bernstein 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. Philip M. Bernstein
910 Boston Post Rd.
Mamaroneck, NY 10543

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.

Constance A. Hagelund

J. Vredenburg

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

June 5, 1981

Daniel & Priscilla Spensieri
Lake Rd., RD
Katonah, NY 10536

Dear Mr. & Mrs. Spensieri:

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
Philip M. Bernstein
910 Boston Post Rd.
Mamaroneck, NY 10543
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DANIEL SPENSIERI and PRISCILLA SPENSIERI	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1976.	:	

Petitioners, Daniel Spensieri and Priscilla Spensieri, Lake Road, RD #2, Katonah, New York 10536, 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. 24496).

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 October 27, 1980 at 1:15 P.M. Petitioners, Daniel Spensieri and Priscilla Spensieri, appeared with Philip M. Bernstein, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether educational expenses incurred by petitioner Priscilla Spensieri were properly deducted.

FINDINGS OF FACT

1. Petitioners, Daniel Spensieri and Priscilla Spensieri, timely filed a joint New York State Income Tax Resident Return for the year 1976. On said return, petitioners claimed miscellaneous itemized deductions of \$973.00 for educational expenses incurred by Priscilla Spensieri.

2. On November 13, 1978, the Audit Division issued against petitioners a Notice of Deficiency asserting that additional personal income tax of \$149.60

was due together with interest. The deficiency was based on a Statement of Audit Changes issued March 16, 1978 wherein education expenses claimed on behalf of petitioner Priscilla Spensieri were disallowed "Since you were not employed or otherwise actively engaged in a trade or business during the period when the expense was incurred."

3. In 1959, Priscilla Spensieri (hereinafter "petitioner") passed the State boards examination and received her license as a registered nurse. She qualified to take the State boards as a result of her participation in a nursing program at a three-year school where she subsequently received her diploma.

4. Petitioner was employed full time in the nursing field from 1959 to 1970 as a staff nurse, head nurse and supervising nurse. From February 1968 until January 1970, petitioner was employed by the County of Westchester and functioned as an instructor of nursing at the Grasslands School of Practical Nursing. Due to her pregnancy, petitioner resigned her position with the Grasslands School of Practical Nursing on January 30, 1970. It has not been shown that petitioner requested a leave of absence from her employer.

5. Petitioner, in 1972, enrolled at Pace University and undertook a part-time program leading to a Bachelor of Nursing degree which she later received in 1978. The educational expenses claimed on petitioners' 1976 return, and subsequently disallowed by the Audit Division, were the unreimbursed expenses incurred by petitioner at Pace University.

6. In 1978, petitioner accepted a full time position with the Westchester Community College, performing services as an instructor which were essentially identical to those she performed for the Grasslands School of Practical Nursing. The Grasslands School of Practical Nursing closed sometime after petitioner

left its employ in 1970 and was absorbed into the Westchester Community College system.

7. Petitioner testified that the Bachelor of Nursing degree received from Pace University did not qualify her for a new occupation. She averred that the courses taken at Pace University were for the maintenance and improvement of her professional nursing skills and that it would be difficult to obtain employment in the nursing field, after an extended absence, if she could not show her prospective employer that she had maintained her skills in the rapidly advancing and changing field of nursing. It was also stated that the Nursing Code of Ethics required petitioner to maintain her individual competence in nursing practice.

8. Petitioner was not gainfully employed in a nursing position from January 1970 until such time as she accepted employment with Westchester Community College in 1978. It has not been shown what petitioner's intentions were with respect to her nursing career at the time she left employment in 1970 or whether any effort was made to obtain employment prior to 1978.

CONCLUSIONS OF LAW

A. That petitioner Priscilla Spensieri is considered to have voluntarily and indefinitely abandoned the pursuit of her trade or business since a two (2) year period elapsed from the time she left her nursing position to the time she started her degree program at Pace University and since a total of eight (8) years expired before petitioner was re-employed in a nursing capacity.

B. That the education expenses incurred by petitioner Priscilla Spensieri are not deductible within the meaning and intent of Internal Revenue Code section 162(a) and Treasury Regulation section 1.162-5. (See: Canter v. United

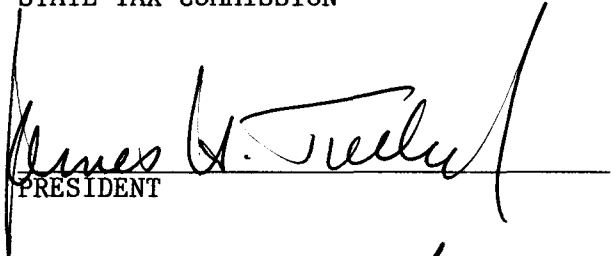
States, 354 F.2d 352; Reisinger v. Commissioner, 71 TC 568 and Corbett v. Commissioner, 55 TC 884.)

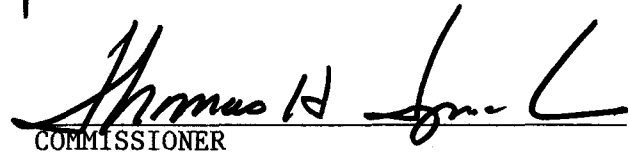
C. That the petition of Daniel Spensieri and Priscilla Spensieri is denied and the Notice of Deficiency issued November 13, 1978 sustained.

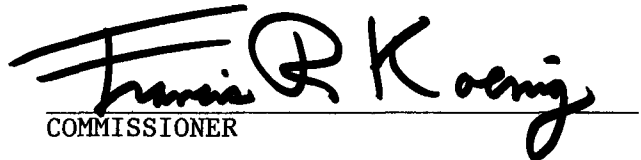
DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER