

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Maurie & Thelma Webster :
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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Laurie & Thelma Webster, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Maurie & Thelma Webster
35 Sutton Pl.
New York, NY 10022

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
25th day of September, 1981.

Annice P. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
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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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Menachem David the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Menachem David
David & Gelman
381 Sunrise Highway
Lynbrook, NY 11563

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
25th day of September, 1981.

Cornie A. Hegelund

J. Vredenburg

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

September 25, 1981

Maurie & Thelma Webster
35 Sutton Pl.
New York, NY 10022

Dear Mr. & Mrs. Webster:

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
Menachem David
David & Gelman
381 Sunrise Highway
Lynbrook, NY 11563
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
MAURIE WEBSTER and THELMA WEBSTER
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1973.

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DECISION

Petitioners, Maurie Webster and Thelma Webster, 35 Sutton Place, New York, New York 10022, 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. 22054).

On April 4, 1981, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUES

I. Whether petitioners are properly entitled to greater deductions for investment management fees, investment related travel expenses and dues and subscriptions, than those allowed by the Audit Division.

II. Whether petitioners are properly entitled to claim a greater rental loss than that allowed by the Audit Division.

FINDINGS OF FACT

1. Maurie Webster and Thelma Webster (hereinafter petitioners) timely filed a joint New York State Income Tax Resident Return for the year 1973 whereon they reported total miscellaneous deductions of \$8,369.00 and a rental loss of \$2,977.00.

2. On January 14, 1976, the Audit Division issued a Statement of Audit Changes to petitioners wherein, "as a result of audit", the following adjustments were made:

	<u>CLAIMED</u>	<u>SUBSTANTIATED</u>	<u>ADJUSTMENT</u>
Investment Fees	\$ 565.00	\$ 525.00	\$ 40.00
Travel-Investment	413.00	- 0 -	413.00
Dues & Subscriptions	550.00	280.00	270.00
Rental Income & Expense	(2977.00)	(1821.00)	1156.00
Total Adjustment			<u>\$1879.00</u>

Accordingly, a Notice of Deficiency was issued against petitioners on February 27, 1978 asserting additional personal income tax of \$280.35, plus interest of \$81.39, for a total due of \$361.74. On November 23, 1976 petitioners executed a form extending the period of limitation upon assessment of personal income tax to April 15, 1978.

3. Petitioners did not submit, and the record does not contain, any documentation or information with respect to the deductions claimed for investment fees and dues and subscriptions.

4. With respect to the deduction claimed for investment related travel, the record contains substantiation for the major portion of the total expenditure, which related to a trip to California. Petitioners contended that the primary purpose of said trip was to conduct "an examination of property owned by Judy (Thelma) and her mother, to determine its exact condition and whether repairs should be made".

5. Analysis of documentation submitted by petitioners in support of certain rental expenses claimed revealed that the allowable total of such expenses was not greater than that initially allowed by the Audit Division.

CONCLUSIONS OF LAW

A. That petitioners have failed to sustain their burden of proof required pursuant to section 689(e) of the Tax Law to show that they were properly

entitled to greater deductions for investment management fees and dues and subscriptions than those allowed by the Audit Division. Accordingly, the adjustments made to these deductions are sustained.

B. That the petitioners have failed to sustain the burden of proof required pursuant to section 689(e) of the Tax Law to show that they owned the California property. Accordingly, the adjustment to the investment related travel expense is sustained.

C. That petitioners have failed to sustain their burden of proof required pursuant to section 689(e) of the Tax Law to show that they were properly entitled to a greater rental loss than that allowed by the Audit Division. Accordingly, the adjustment made to such claimed rental loss is sustained.

D. That the petition of Maurie Webster and Thelma Webster is denied and the Notice of Deficiency dated February 27, 1978 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER