

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Herbert L. Charles, Jr. :  
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 :  
1974. :  
\_\_\_\_\_

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 October, 1982, he served the within notice of Decision by certified mail upon Herbert L. Charles, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Herbert L. Charles, Jr.  
21 Hillcrest Dr.  
Painted Post, NY 14870

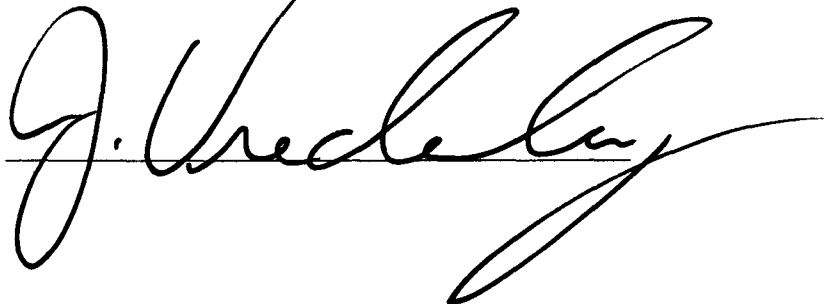
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 October, 1982.



RECORDED TO THE RECORDS  
OFFICE OF THE COMMISSIONER OF TAXATION  
SECTION 274



STATE OF NEW YORK

STATE TAX COMMISSION

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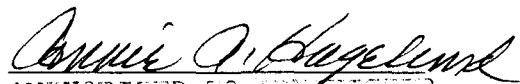
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Walter R. Conlin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

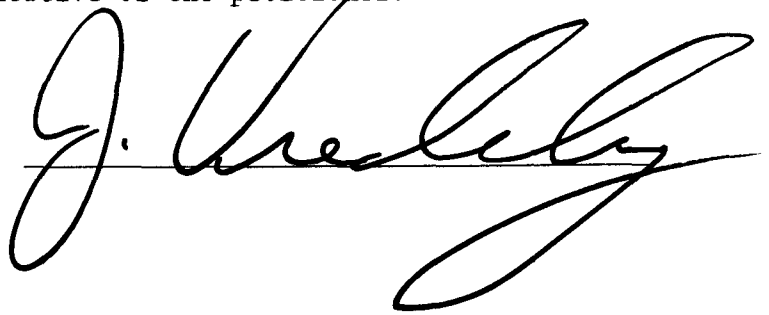
Walter R. Conlin  
P.O. Box 1386  
Corning, NY 14830

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 October, 1982.

  
ANNE P. HAGELUND  
CLERK OF THE TAX LAW  
SECTION 174



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

October 6, 1982

Herbert L. Charles, Jr.  
21 Hillcrest Dr.  
Painted Post, NY 14870

Dear Dr. Charles:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Walter R. Conlin  
P.O. Box 1386  
Corning, NY 14830  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HERBERT L. CHARLES, JR.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

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Petitioner, Herbert L. Charles, Jr., 21 Hillcrest Drive, Painted Post, New York 14870, 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 1974 (File No. 16132).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York, on September 24, 1981 at 1:15 P.M. Petitioner appeared by Walter R. Conlin, PA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

ISSUE

Whether petitioner provided sufficient evidence to establish his deductions for "Travel Expenses", "Contributions", "Taxes" and "Medical and Dental Expenses".

FINDINGS OF FACT

1. Petitioner, Herbert L. Charles, Jr. and his wife Darlene Charles, filed a New York State Combined Income Tax Return for the year 1974. Attached to said return was an Application for Automatic Extension of Time to File U.S. Individual Income Tax Return.

2. On May 24, 1976, the Audit Division issued a Notice of Deficiency in the sum of \$517.78, along with an explanatory Statement of Audit Changes, which itemized its determination as follows:

<u>ITEM</u>	<u>AMOUNT REPORTED ON RETURN</u>	<u>CORRECTED AMOUNT</u>	<u>ADJUSTMENT</u>
Travel Expense	\$2,823.60	\$ -0-	\$2,823.60
Contributions	1,184.40	78.00	1,106.40
Taxes	1,481.58	450.24	1,031.30
Medical and Dental Expense	150.00	-0-	150.00
	Total Adjustment		<u>\$5,111.30</u>

At the hearing, the Audit Division and petitioner stipulated that the "corrected amount" for "Medical and Dental Expenses", "Taxes" and "Contributions" were increased to \$135.00, \$1,303.59 and \$198.00 respectively. Travel expense and contributions were still at issue.

3. Petitioner Herbert L. Charles was a Personnel Development Manager for Corning Glass Works during the year 1974, and earned \$21,891.69. This company reimbursed petitioner for all planned and preapproved travel only. Petitioner worked with minorities and was involved in counseling, audits and career planning. Petitioner contended that it was necessary that he be present to supervise and facilitate the implementation of personnel activities in various plants in the Corning area. The costs for transportation to these various plants were borne by him. Petitioner claimed 19,876 unreimbursed business miles and \$86.00 in parking.

4. In support of the travel expense claimed, petitioner submitted the following:

(a) A diary, in which the information contained on the diary pages was sparse and limited in content. The information that was there was uniform but

there were claims for expenses on nonexistent days so as to make the diary appear not timely kept.

(b) Two automobile dealer's worksheets reporting speedometer readings on petitioner's 1972 Montego automobile of 46,465 and 69,519 on November 19, 1973 and November 26, 1974 respectively. Petitioner is claiming 19,961 business miles and 28,157 nonbusiness miles driven in 1974.

(c) A letter dated October 16, 1981 reportedly stating the company's travel reimbursement policy. The letter did not meet the normal business style or format and was not sent from the company's offices.

5. Petitioner submitted expenses he incurred for minority projects. However, these expenses were not for recognized qualified organizations. Petitioner did not submit any other documentary evidence to substantiate his deduction for contributions.

#### CONCLUSIONS OF LAW

A. That tax deductions and exemptions depend upon clear statutory provisions, and the burden is upon the taxpayer to establish a right to them (Matter of Grace v. New York State Tax Commission, 37 N.Y.2d 193).

B. That petitioner is entitled to deductions as stipulated, to wit, Contributions of \$198.00, Taxes of \$1,303.59 and Medical and Dental Expenses of \$135.00. That petitioner has failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, in establishing that he was entitled to deductions greater than those granted. Moreover, the records introduced into evidence at and after the hearing were inconsistent. That such inconsistencies vitiate the credibility of petitioner's records for the period in issue.

C. That the petition of Herbert L. Charles, Jr., is granted to the extent provided in Conclusion of Law "B", supra, and that the petition is in all other respects denied.

D. That the Audit Division is directed to modify the Notice of Deficiency dated May 24, 1976 to be consistent with the decision rendered herein.


DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

  
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PRESIDENT

  
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COMMISSIONER

  
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COMMISSIONER