

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph & Jeannette Friedberg :
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 Years :
1974 & 1975. :

AFFIDAVIT OF MAILING

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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon Joseph & Jeannette Friedberg, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph & Jeannette Friedberg
1401 Ocean Ave.
Brooklyn, NY 11230

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
3rd day of January, 1983.

Kathy Pfaffenbach

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
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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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon Irving N. Fishman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving N. Fishman
570 7th Ave.
New York, NY 10018

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
3rd day of January, 1983.

Kathy Maffei

J. Vredenburg

STATE OF NEW YORK

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In the Matter of the Petition :
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Joseph Friedberg
Travessa Vale Do Rio Lote #1 RCD
Sao Joao De Estoril, PORTUGAL

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
3rd day of January, 1983.

Kathy Pfaffenbach

J. Vredenburg

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

January 3, 1983

Joseph & Jeannette Friedberg
1401 Ocean Ave.
Brooklyn, NY 11230

Dear Mr. & Mrs. Friedberg:

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
Irving N. Fishman
570 7th Ave.
New York, NY 10018
AND
Joseph Friedberg
Travessa Vale Do Rio Lote #1 RCD
Sao Joao De Estoril, PORTUGAL
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JOSEPH AND JEANNETTE FRIEDBERG
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1974 and 1975.

DECISION

Petitioners, Jeannette Friedberg, 1401 Ocean Avenue, Brooklyn, New York 11230, and Joseph Friedberg, Travessa Vale Do Rio Lote #1 RCD, Sao Joao De Estoril, Portugal, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1974 and 1975 (File No. 22637).

A formal hearing was commenced before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 22, 1981, continued on November 18, 1981 at the same offices and concluded at the same offices on April 26, 1982. Petitioners appeared by Irving N. Fishman, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed certain business and personal itemized deductions on petitioners' 1974 and 1975 income tax returns.

FINDINGS OF FACT

1. New York State Income Tax Returns on a combined form (IT-208) were filed on behalf of petitioners, Joseph and Jeannette Friedberg for the year 1974. A joint U.S. Individual Income Tax Return for the year 1974 was also filed on behalf of petitioners.

2. A joint New York State Income Tax Resident Return for the year 1975 and a joint U.S. Individual Income Tax Return for the year 1975 were also filed on behalf of petitioners.

3. On April 14, 1978, the Audit Division issued a Notice of Deficiency accompanied by an explanatory Statement of Audit Changes which asserted a deficiency of personal income tax for the years 1974 and 1975. The Statement of Audit Changes averred that, as a result of a field audit, additional tax was due. The Schedule of Audit Adjustments which was attached to the Statement of Audit Changes listed Mr. Friedberg's personal and business deductions which were disallowed as follows:

1974

Schedule "C" expenses disallowed:

Repairs	\$ 1,205.00
Legal and professional fees	74,792.00
Other business expenses	37,906.00
Insurance	4,105.00
Total Schedule "C" expenses disallowed	<u>\$118,008.00</u>
Contributions disallowed	\$ 324.00
Miscellaneous deductions disallowed	24.00
Net adjustment per audit	<u>\$118,356.00</u>

1975

Schedule "C" expenses disallowed:

Repairs	\$ 691.00
Legal and professional fees	37,986.00
Other business expenses	29,263.00
Insurance	3,766.00
Total Schedule "C" expenses disallowed	<u>\$ 71,706.00</u>
Contributions disallowed	\$ 417.00
Miscellaneous deductions disallowed	36.00
Net adjustment per audit	<u>\$ 72,159.00</u>

4. Mr. and Mrs. Friedberg had separated before the years in issue.

5. During the years in issue, Mr. Friedberg was a practicing lawyer engaged in the pre-trial preparation of negligence cases. Mrs. Friedberg was not involved with Mr. Friedberg's practice of law.

6. In 1974 and 1975, Mr. Friedberg maintained extensive documentation regarding his fees and expenses. This documentation was required to be kept by the Rules of the Appellate Division of the New York State Supreme Court. An employee of Mr. Friedberg would record each check written in a cash disbursements journal for each category of expenditure. The checks would be divided into categories of expenditures and wrapped in a rubber band. Supporting documentation, such as invoices, were also kept on file. Mr. Friedberg's accountant would review the checks and related documentation prior to preparing each year's tax return.

7. Mrs. Friedberg became aware that her husband had filed returns with her name on them. This caused Mrs. Friedberg to become sufficiently concerned to seek legal advice. On the advice of her attorney, Mrs. Friedberg wrote a letter to the New York City, New York State and Federal governments advising each that she had been separated for years and that any returns purporting to bear her signature were false in that she had not signed any tax returns for many years.

8. Mrs. Friedberg wrote the letter because she was worried that she would have to pay for penalties she was not responsible for. However, Mrs. Friedberg did not know what was on the returns filed for the years in issue or that any amounts reported on the returns were incorrect.

9. The Notice of Deficiency was issued based on the letter written by Mrs. Friedberg.

10. An audit of Mr. Friedberg's records was not conducted prior to the issuance of the Notice of Deficiency.

11. The deductions claimed by Mr. Friedberg during the years in issue were similar to amounts claimed in prior years.

12. After the Notice of Deficiency was issued, petitioners' representative provided cash disbursement journals, cancelled checks and other documentation pertaining to the deductions which were disallowed. Petitioners were not given credit for any of the documentation provided since questions remained regarding whether certain cash disbursements were properly deducted.

CONCLUSIONS OF LAW

A. That the letter from Mrs. Friedberg to the Audit Division noted in Finding of Fact "7" did not provide a basis to conclude that the business or itemized deductions claimed by Mr. Friedberg for 1974 or 1975 were incorrect. This becomes particularly evident by the Audit Division's not having questioned the income reported by petitioners on the returns during the years in issue.

B. That the issuance of a Notice of Deficiency must be premised upon a factual basis (See Maurice Edelstein Trust, State Tax Commission, April 30, 1982). Moreover, a Notice of Deficiency may not be issued for the sole purpose of procuring an extension of the Statute of Limitations in order to make a different assessment (Brown v. State Tax Comm., 199 Misc. 349, 353-354, aff'd. 279 App. Div. 837, aff'd. 304 N.Y. 651).

C. That since there was no factual basis for the disallowance of Mr. Friedberg's business or itemized deductions contained in the Notice of Deficiency, the

petition is granted and the Notice of Deficiency issued April 14, 1978 is cancelled.

DATED: Albany, New York

JAN 3 1983

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER