

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of

Morton Horowitz  
and Regina Horowitz

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of NYS & NYC Income :  
Tax under Article 22 & 30 of the Tax Law for the :  
Year 1976.

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State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Morton Horowitz, and Regina Horowitz the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morton Horowitz  
and Regina Horowitz  
2750 Olinville Ave., Apt. 3C  
Bronx, NY 10467

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  
9th day of April, 1982.

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STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Morton Horowitz :  
and Regina Horowitz :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of NYS & NYC Income :  
Tax under Article 22 & 30 of the Tax Law for the :  
Year 1976. :

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State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Eli Horowitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eli Horowitz  
2750 Olinville Ave.  
Bronx, NY 10467

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  
9th day of April, 1982.

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

April 9, 1982

Morton Horowitz  
and Regina Horowitz  
2750 Olinville Ave., Apt. 3C  
Bronx, NY 10467

Dear Mr. & Mrs. Horowitz:

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 & 1312 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  
Eli Horowitz  
2750 Olinville Ave.  
Bronx, NY 10467  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MORTON HOROWITZ AND REGINA HOROWITZ	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles	:	
22 and 30 of the Tax Law for the Year 1976.	:	

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Petitioners, Morton Horowitz and Regina Horowitz, 2750 Olinville Avenue, Apt. 3C, Bronx, New York 10467, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File No. 24310).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 4, 1981 at 9:15 A.M. Petitioners appeared by Eli Horowitz. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUE

Whether petitioners are properly entitled to a greater deduction for medical and dental expenses than that claimed on their original return.

#### FINDINGS OF FACT

1. Petitioners, Morton Horowitz and Regina Horowitz, timely filed a New York State Income Tax Resident Return (with New York City Personal Income Tax) for the year 1976, whereon they erroneously divided their total income equally rather than in accordance with the actual earnings of each spouse.

2. On March 14, 1978 the Audit Division issued a Statement of Audit Changes to petitioners, wherein their 1976 tax liability was recomputed based on an allocation of income between each spouse as if each had filed separate Federal returns. Accordingly, a Notice of Deficiency was issued against petitioners on October 13, 1978 asserting additional New York State personal income tax of \$231.20, additional New York City personal income tax of \$115.37, plus interest of \$44.06, for a total due of \$390.63.

3. Subsequent to the issuance of the Notice of Deficiency, petitioners filed a "corrected" return whereon they properly reported their respective share of total income. Additionally, pursuant to such return, petitioners claimed an increased medical and dental expense deduction of \$3,694.00 while said deduction claimed per their original return totalled \$842.00.

4. During the hearing held herein, petitioners submitted acceptable documentation supporting their originally claimed medical and dental expense deduction of \$842.00. No evidence was presented supporting the additional medical and dental expense deduction claimed per their "corrected" return.

5. Review of petitioners' return indicated that they erroneously neglected to reduce their total income by State income tax refunds of \$754.00, which were included in their reported total income per Schedule A of their return.

#### CONCLUSIONS OF LAW

A. That the Personal Income Tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Article 30.

B. That petitioners have failed to sustain their burden of proof required pursuant to section 689(e) of the Tax Law to show that they are properly entitled to a greater deduction for medical and dental expenses than that claimed on their original return. Accordingly, petitioners are properly entitled to a medical and dental expense deduction of \$842.00 per said original return.

C. That petitioners are properly entitled to reduce their reported total income by State income tax refunds of \$754.00 within the meaning and intent of section 612(c)(7) of the Tax Law.

D. That the petition of Morton Horowitz and Regina Horowitz is granted to the extent provided in Conclusion of Law "C" supra, and except as so granted, said petition is, in all other respects denied.


E. That the Audit Division is hereby directed to modify the Notice of Deficiency dated October 13, 1978 to be consistent with the decision rendered herein.

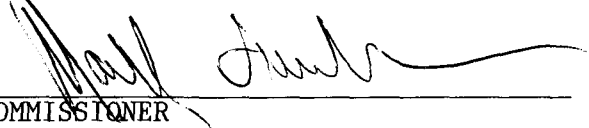
DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER