

STATE TAX COMMISSION

AFFIDAVIT OF MAILING

State of New York
County of Albany

Neal & Helene Morse
3026 Avenue R
Brooklyn, NY 11229

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.

Camille P. Hagelund

~~AUTHORIZED TO DISSEMINATE
ONLY FOR USE BY FBI LAW
SECTION 2.4~~

J. Underberg

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

October 6, 1982

Neal & Helene Morse
3026 Avenue R
Brooklyn, NY 11229

Dear Mr. & Mrs. Morse:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
NEAL MORSE and HELENE MORSE
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1975.

DECISION

Petitioners, Neal Morse and Helene Morse, 3026 Avenue R, Brooklyn, New York 11229, 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 1975 (File No. 23330).

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 July 9, 1981 at 10:45 A.M. Petitioner Neal Morse appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the Notice of Deficiency should be dismissed on the ground of laches.

II. Whether the Notice of Deficiency should be dismissed on the ground that the Department of Taxation and Finance's answer to the petition of Neal Morse and Helene Morse did not relate to the issues and was untimely served.

III. Whether petitioners are properly entitled to a medical expense deduction for expenses attributable to Helene Morse's attendance at Brooklyn College.

FINDINGS OF FACT

1. Petitioners, Neal Morse and Helene Morse, timely filed a joint New York State Income Tax Resident Return for the year 1975 whereon they claimed \$1,657.05 as an education expense attributable to costs incurred for tuition and related expenses relative to Helene Morse's attendance in the Brooklyn College certificate program in school psychology which is a sixty credit masters and post masters program necessary for New York State certification as a school psychologist.

2. On November 10, 1977, the Audit Division issued a Statement of Audit Changes to petitioners wherein said education expense was disallowed. Additionally, adjustments were made to deductions claimed for babysitting fees and transportation to doctors. Accordingly, a Notice of Deficiency was issued against petitioners on May 12, 1978 asserting additional personal income tax of \$276.70, plus interest of \$44.85, for a total due of \$321.55.

3. On May 19, 1978, petitioners filed a petition for redetermination of the deficiency.

4. On March 27, 1979, petitioner Neal Morse attended a pre-hearing conference for the purpose of resolving the issues. Such conference was unsuccessful. Subsequently, the petition of Neal Morse and Helene Morse was deemed perfected on September 7, 1979 pursuant to a letter from the Secretary of the State Tax Commission.

5. On October 30, 1979, the Department of Taxation and Finance served an answer to said petition. Said answer addressed the issues raised in the petition. A reply to such answer was filed by petitioners on November 15, 1979.

6. The record indicates that petitioner Neal Morse caused a delay in the initial audit proceeding by postponing and cancelling scheduled appointments and failing to respond to a letter from the Audit Division.

7. During the hearing held herein the Audit Division conceded that;

(a) substantiation of the expenses incurred attributable to Helen Morse's attendance at Brooklyn College is not at issue, only the nature and deductibility of such expenses are at issue, and;

(b) petitioners are entitled to the full deduction claimed for "transportation to doctors".

8. Petitioners conceded the adjustment to "baby-sitting fees".

9. Petitioners conceded that the expenses claimed for attendance at Brooklyn College are not properly allowable as an education expense since petitioner Helene Morse was unemployed during the year at issue, but they maintain that said expenses constitute a proper medical expense deduction since, as the record indicates, she attended school at the recommendation of her psychologist who stated in part that:

"During the calendar year 1975, Helene Morse, my patient, was enrolled in graduate studies pursuant to my direction and recommendation. This movement developed in response to gradual and painstaking efforts at overcoming anxiety and tension related to school achievement, a movement integral to her overall self-image and total life movement."

10. During 1975, petitioner Helene Morse was extensively engaged in psychotherapy treatments.

11. Brooklyn College is not a special school for the alleviation or treatment of mental disorders.

CONCLUSIONS OF LAW

A. That the State Tax Commission is not estopped from making a claim against petitioners. A state agency or body cannot be estopped from asserting

its governmental power regarding acts within its governmental capacity. The record in the instant case shows no undue delay by the State Tax Commission in instituting action. Rather, it shows several delays by petitioners. Accordingly, the remedy of laches claimed by petitioner is unfounded.

B. That the Law Bureau shall serve an answer on the petitioner or petitioner's representative, if any, within 60 days from the date the Secretary acknowledged receipt of an acceptable perfected petition. (20 NYCRR 601.6)

Since the petition of Neal Morse and Helene Morse was deemed perfected on September 7, 1979, the answer served on October 30, 1979 with respect thereto was timely. Furthermore, petitioners' claim that said answer did not relate to the petition has no merit. Accordingly, the answer is deemed proper.

C. That Treasury Regulation 1.213-1(e)(1)(ii) states that an expenditure which is merely beneficial to the general health of an individual is not an expenditure for medical care. Helene Morse attended Brooklyn College at the recommendation of her psychologist as a "movement integral to her overall self-image and total life movement". Since the expenditure was for her general health, it is not a medical expense deduction.

D. That Treasury Regulation 1.213-1(e)(1)(V)(a) provides, in pertinent part, that:

"While ordinary education is not medical care, the cost of medical care includes the cost of attending a special school for a mentally or physically handicapped individual, if his condition is such that the resources of the institution for alleviating such mental or physical handicap are a principal reason for his presence there."

Since Brooklyn College is not a special school which was attended for the alleviation of Helene Morse's mental state, costs incurred relative to such attendance do not qualify for deduction as a medical expense.

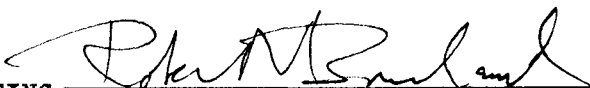
E. That the petition of Neal Morse and Helene Morse is granted to the extent of the concessions made by the Audit Division (Finding of Fact "7", supra) and that, except as so granted, said petition is in all other respects denied.


F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated May 12, 1978 to be consistent with the decision rendered herein.

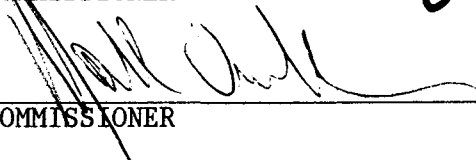
DATED: Albany, New York

STATE TAX COMMISSION

OCT 06 1982


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER