

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Michael H. Sacks  
and Judith K. Sacks

: 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. :

State of New York  
County of Albany

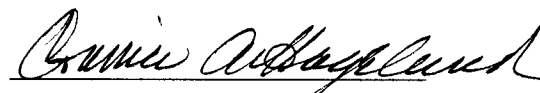
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of October, 1982, he served the within notice of Decision by certified mail upon Michael H. Sacks, and Judith K. Sacks the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael H. Sacks  
and Judith K. Sacks  
320 W. 86th St.  
New York, NY 10024

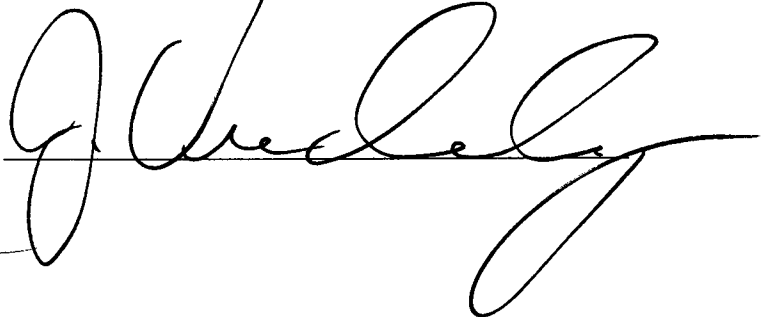
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
12th day of October, 1982.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Michael H. Sacks :

and Judith K. Sacks

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.

State of New York  
County of Albany

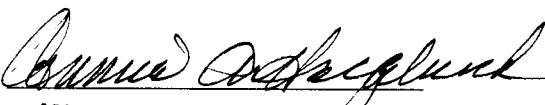
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of October, 1982, he served the within notice of Decision by certified mail upon Douglas Buck the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Douglas Buck  
Buck, Sturmer & Co.  
310 Madison Ave.  
New York, NY 10017

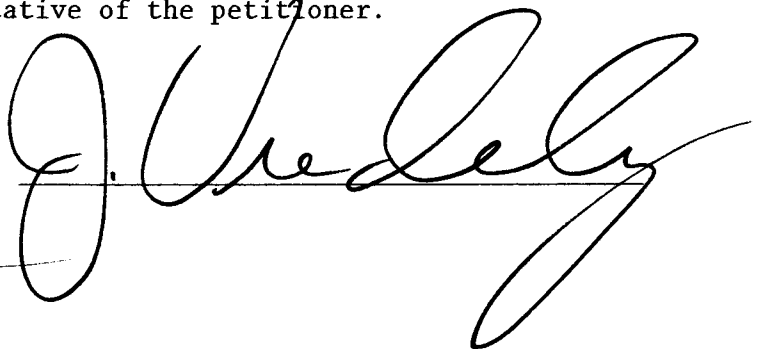
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
12th day of October, 1982.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO  
SECTION 174



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

October 12, 1982

Michael H. Sacks  
and Judith K. Sacks  
320 W. 86th St.  
New York, NY 10024

Dear Mr. & Mrs. Sacks:

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  
Douglas Buck  
Buck, Sturmer & Co.  
310 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

## STATE TAX COMMISSION

## DECISION

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 24, 1981. Petitioners appeared by Douglas Buck, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

Whether petitioners properly deducted local travel and entertainment expenses.

1. Petitioners, Michael H. Sacks and Judith K. Sacks, timely filed a New York State Income Tax Resident Return for 1976 on which petitioner Michael H. Sacks reported wage income of \$54,095.05 from Cornell University Medical College. Federal, New York State, and social security taxes were withheld from his wages.

2. On December 27, 1978, the Audit Division issued a Statement of Audit Changes against petitioner asserting New York State and New York City personal

income taxes due of \$2,217.37 plus interest. Said statement showed adjustments to income of \$10,942.00 and to the statutory medical adjustment (3%). On May 10, 1979, a Notice of Deficiency was issued in accordance with the Statement of Audit Changes with updated interest. As a result of a conference, petitioners were allowed certain expenses incurred in pursuit of income and denied deductions, in whole or part, for rent and utilities, telephone, local travel and entertainment. A revised Statement of Audit Changes was issued on November 5, 1979 to reflect the adjustments made as a result of the conference. This Statement of Audit Changes reduced the additional personal income taxes due to \$908.89, as follows:

	<u>Per Return</u>	<u>Per Audit</u>	<u>Adjustment</u>
Rent and utilities	\$3,484.00	\$3,049.00	\$ 435.00
Telephone	623.00	416.00	207.00
Local travel	1,690.00	-0-	1,690.00
Entertainment	2,153.00	-0-	2,153.00
			<u>\$4,485.00</u>
Medical Adjustment (3% of \$4,485.00)			134.55
Total Adjustment Per Audit			<u>\$4,619.55</u>
	<u>NYS</u>	<u>NYC</u>	
Tax on above	\$692.93	\$198.64	
Tax surcharge (2½%)	17.32		
Additional Personal Income Taxes Due	<u>\$710.25</u>	<u>\$198.64</u>	\$ 908.89

Although no formal reduction of the Notice of Deficiency was made, this revised Statement of Audit Changes intended to accomplish this.

3. During the hearing, petitioner's representative conceded the adjustments for rent and utilities and for telephone expense.

4. Petitioner Michael H. Sacks was employed by Cornell University Medical College ("Cornell") as a psychiatrist. He submitted a copy of a letter he received from the Cornell Medical Center dated April 1, 1976, and signed by a Dr. Robert Michels, which stated as follows:

"Under the terms of our employment relationship, Dr. Sacks can engage in private practice. However, all the fees earned by him must be turned over to the medical group in which he is a participating member. A portion of the fees generated by Dr. Sacks will be paid back to him in the form of extra compensation, and, in addition, he will be entitled to reimbursement for business expenses up to no more than 5% of the amount of fees generated by him with a maximum reimbursement of \$1,137.00 for the academic year July 1, 1975 to June 30, 1976. Any expenses incurred by Dr. Sacks in excess of that amount must be borne by him."

5. During the hearing, petitioner's representative submitted a diary which he asserted listed entertainment expenses claimed in the amount of \$2,153.00. The diary consisted of cancelled checks, receipts and entries. Some of the receipts were from grocery stores and delicatessens. The entries in the diary, for the most part, showed the date of entertainment, cost, place and nature of entertainment. Some entries did not list the individuals entertained nor did the diary indicate the business purpose or benefit derived by petitioner Michael Sacks.

6. Subsequent to the hearing, petitioners' representative submitted a schedule showing the items which comprise local travel of \$1,690.00. Said schedule indicated that petitioner Michael H. Sacks scheduled appointments three days each week for forty-eight weeks at 8:00 a.m. in his office prior to his leaving for work at Cornell where he worked from 9:00 a.m. to 5:00 p.m. The schedule also indicated that he had appointments in the evenings five days each week for forty-eight weeks. Petitioners claimed \$1,248.00 in travel expenses (taxi fares) in relation to these appointments. The schedule further indicated that Michael Sacks spent a total of sixty-eight hours with various supervisors discussing his interpretation of patient problems. The portion of the travel expenses (taxi fares) attributable to this was listed as \$442.50. The schedule submitted by petitioners' representative appears to be based on

estimates. Petitioners did not submit any receipts or other documentary evidence to support the deduction claimed for taxi fares.

7. Petitioners, Michael Sacks and Judith Sacks, were not present at the hearing.

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 to the corresponding sections of Article 30.

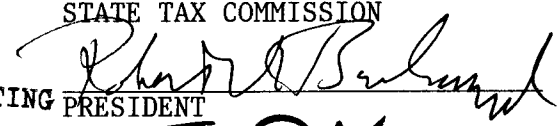


B. That petitioners, Michael H. Sacks and Judith K. Sacks, failed to meet the substantiation requirements pursuant to Treasury Regulation §1.274-5 and, therefore, failed to sustain their burden of proof imposed by section 689(e) of the Tax Law in establishing that travel and entertainment expenses were ordinary and necessary.

Therefore, the deductions claimed for local travel and entertainment expenses are disallowed.

C. That the petition of Michael H. Sacks and Judith K. Sacks is granted only to the extent as reflected in the revised Statement of Audit Changes dated November 5, 1979 in that the Notice of Deficiency is adjusted to reflect additional tax due of \$908.89, plus any interest which may be due and owing. In all other respects the petition is denied.

DATED: Albany, New York

OCT 12 1982

STATE TAX COMMISSION  
  
ACTING PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER