

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Pal & Agi Weis :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
& UBT under Article 22 & 23 of the Tax Law for the :  
Year 1975. :  
\_\_\_\_\_

State of New York  
County of Albany

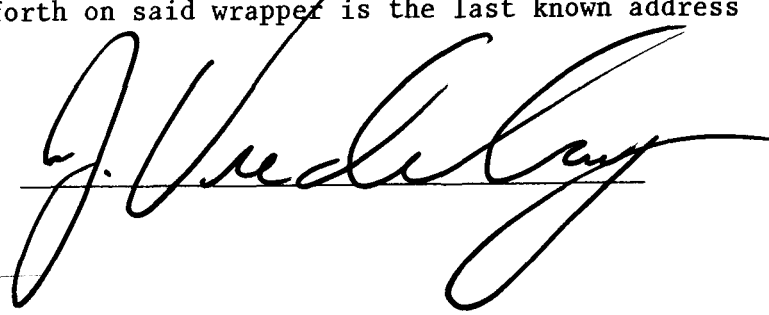
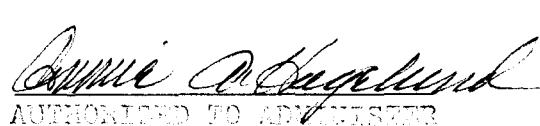
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Pal & Agi Weis, the petitioners in the within proceeding,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

Pal & Agi Weis  
211 Hewes St.  
Brooklyn, NY 11211

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.

  
  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO EIT LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Pal & Agi Weis :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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State of New York  
County of Albany

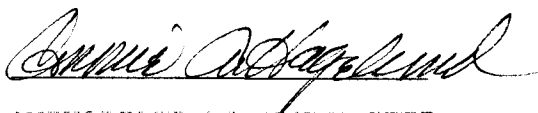
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Shimshon Bier the representative of the petitioner in the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

Shimshon Bier  
1545 50th St.  
Brooklyn, NY 11219

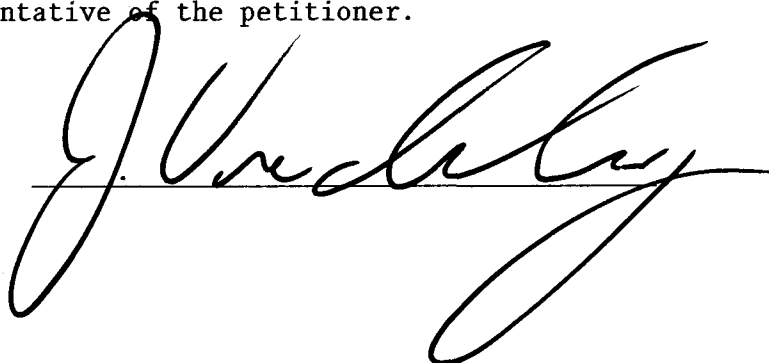
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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.



AUTHORIZED AS COMMISSIONER  
OF THE STATE TAX COMMISSION  
SERIAL 100



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

October 6, 1982

Pal & Agi Weis  
211 Hewes St.  
Brooklyn, NY 11211

Dear Mr. & Mrs. Weis:

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 & 722 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  
Shimshon Bier  
1545 50th St.  
Brooklyn, NY 11219  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
PAL WEIS and AGI WEIS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of the	:	
Tax Law for the Year 1975.	:	

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Petitioners, Pal Weis and Agi Weis, 211 Hewes Street, Brooklyn, New York 12111, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1975 (File No. 26593).

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 September 23, 1981 at 2:45 P.M. Petitioners appeared by Shimshon Bier. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether, and if so to what extent, petitioners are properly entitled to claim rental expenses in connection with rental property located at 173-175 Hewes Street, Brooklyn, New York.

II. Whether, and if so to what extent, petitioners are properly entitled to claim a medical expense deduction.

III. Whether petitioners are properly entitled to allocate their items of income, gain and loss between husband and wife.

FINDINGS OF FACT

1. Petitioners, Pal Weis and Agi Weis, filed a New York State Combined Income Tax Return for the year 1975 whereon each reported one half of the joint income reported for dividends and rental income. Additionally, Pal Weis filed an unincorporated business tax return for 1975 whereon he reported income derived from his sport jacket manufacturing business.

2. As the result of an audit, the Audit Division issued a Statement of Audit Changes to petitioners on December 18, 1978 wherein adjustments were made of \$4,566.00 for "additional funds required" and \$552.00 for insurance which was deemed personal. Both of said adjustments were made for personal and unincorporated business tax purposes. Additionally, adjustments were made attributing the wife's claimed portion of rental income and dividend income to the husband. Accordingly, a Notice of Deficiency was issued against petitioner Pal Weis on March 30, 1979 asserting additional personal income tax of \$421.98 (comprised of an amount due of \$486.88 for the husband and a credit of the full amount previously paid by the wife of \$64.90), additional unincorporated business tax of \$236.66, plus interest of \$165.34, for a total due of \$823.98.

3. At a pre-hearing conference, certain adjustments were changed by the Audit Division as follows:

a) The adjustment for "additional funds required" was retracted by the Audit Division

b) The adjustment for insurance was conceded by the Audit Division to be health insurance of which \$150.00 was allowed as a medical expense; and

c) Rental expenses of \$7,094.00 attributable to the property located at 173-175 Hewes Street were disallowed as unsubstantiated.

A recomputation of tax incorporating the aforestated adjustments yielded a net deficiency equal to that asserted pursuant to the Notice of Deficiency.

4. During the hearing the Audit Division conceded that petitioners had previously substantiated medical expenses of \$1,482.00 which included the full health insurance payment of \$552.00 and an amount attributable to the purchase of drugs of \$50.00.

5. During the hearing the Audit Division conceded that; the rental loss of \$2,615.00 from the property 211 Hewes Street was attributable to the wife, the rental income of \$857.00 from the property 173-175 Hewes Street was attributable to the wife, and the rental income of \$4,927.00 from the property 184 Lee Avenue was attributable to the husband.

6. Dividend income of \$3,016.00, of which each spouse reported half, was comprised of \$2,171.00 attributable to the husband and \$845.00 attributable to the wife. Interest income of \$18.00, which was reported by the husband, was attributable to the wife.

7. Of the \$7,094.00 rental expenses disallowed on the wife's property located at 173-175 Hewes Street, petitioners substantiated an additional amount of \$370.00 with respect to insurance.

8. During the hearing the Audit Division argued that petitioners were not entitled to file separately since the wife had negative income.

#### CONCLUSIONS OF LAW

A. That the adjustment to petitioner Agi Weis's rental expenses for the property 173-175 Hewes Street is reduced from \$7,094.00 to \$6,724.00 based on additional substantiation submitted of \$370.00.

B. That petitioners are properly entitled to a net medical expense deduction of \$413.47 as computed based on their revised joint adjusted gross income.

C. That petitioners are properly entitled to have their tax liabilities computed separately since incorporation of the adjustment in Conclusion of Law "A" supra raises petitioner Agi Weis's adjusted gross income to a level sufficiently high to warrant such filing.

D. That petitioner Pal Weis's tax liability for unincorporated business tax purposes is sustained at \$24.28, the amount recomputed pursuant to the pre-hearing conference.

E. That the petition of Pal Weis and Agi Weis is granted to the extent provided in Conclusions of Law "A", "B", "C" and "D", supra and except as so granted, said petition is in all other respects denied.


F. That section 683(a) of the Tax Law provides for a three year period of limitations after a return is filed within which to assess any additional tax due. A Notice of Deficiency was not issued against petitioner Agi Weis within the three year period of limitation. Therefore, no additional tax may be assessed at this time as a result of Conclusion of Law "A", supra. Further, since she did have income during the year at issue, the taxes that she previously paid may not be used as a credit against the additional tax due from petitioner Pal Weis.

G. That the Audit Division is hereby directed to modify the Notice of Deficiency dated March 30, 1979 to be consistent with the decision rendered herein.


DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER