

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Joseph Barcia : AFFIDAVIT OF MAILING

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 Year :  
1978.

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State of New York  
County of Albany

Kathy Pfaffenbach, 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 14th day of January, 1983, she served the within notice of Decision by certified mail upon Joseph Barcia, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Barcia  
2700 Timbercreek Circle  
Boca Raton, FL 33431

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  
14th day of January, 1983.

Kathy Pfaffenbach

Donna A. Hagelund  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of

Joseph Barcia

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AFFIDAVIT OF MAILING

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 Year :  
1978.

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State of New York  
County of Albany

Kathy Pfaffenbach, 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 14th day of January, 1983, she served the within notice of Decision by certified mail upon Norman Lippman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norman Lippman  
Norman Lippman & Co.  
1995 Linden Blvd.  
Elmont, NY 11003

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  
14th day of January, 1983.

Kathy Pfaffenbach

Connie Q. Haglund  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

January 14, 1983

Joseph Barcia  
2700 Timbercreek Circle  
Boca Raton, FL 33431

Dear Mr. Barcia:

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  
Norman Lippman  
Norman Lippman & Co.  
1995 Linden Blvd.  
Elmont, NY 11003  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOSEPH BARCIA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1978.	:	

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Petitioner, Joseph Barcia, 2700 Timbercreek Circle, Boca Raton, Florida 33431, 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 1978 (File No. 32912).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 19, 1982 at 2:45 P.M. Petitioner, Joseph Barcia, appeared by Norman Lippman, P.A. The Audit Division appeared by Paul B. Coburn, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed the deduction claimed by petitioner for alimony payments made to his former wife.

FINDINGS OF FACT

1. Petitioner herein, Joseph Barcia, timely filed a New York State Income Tax Nonresident Return for the year 1978 on March 6, 1979. An amended return for the year 1978 was filed by petitioner on May 3, 1979. Both the original return and the amended return claimed a modification increasing Federal itemized deductions by the sum of \$3,940.00 for alimony payments made by petitioner to his former spouse.

2. On November 28, 1980, the Audit Division issued a Notice of Deficiency to petitioner for the year 1978, asserting that an additional \$318.68 of New York State personal income tax was due together with interest. The aforementioned notice was premised on an Audit Division letter dated July 7, 1980, where the following explanation was offered:

"... alimony is not considered an allowable adjustment against New York income since it is not a direct expense incurred with the production of your client's [petitioner Joseph Barcia] wages."

3. Petitioner was a nonresident of New York State for the entire tax year 1978, while his former spouse was a resident of New York State. Mr. Barcia's total wage income of \$21,675.36 was derived solely from New York State sources and was reported on his return as New York income. Petitioner's 1978 Federal income tax return claimed as an adjustment to income, the \$3,940.00 in alimony payments made to his ex-wife.

4. Petitioner argued that since his wage income was taxed in its entirety by New York and since his former spouse, as a resident of New York, was required by law to report and pay a tax on the alimony payments she received, that he is entitled to claim said alimony payments as a deduction on his New York State nonresident return.

#### CONCLUSIONS OF LAW

A. That there is no provision in Article 22 of the Tax Law which permits a nonresident taxpayer to increase claimed Federal itemized deductions by a sum equal to the alimony payments made to a former spouse. Tax Law sections 635(c) and 615(d).

B. That pursuant to the Tax Reform Act of 1976, the alimony deduction was moved from an itemized deduction to a deduction in determining adjusted gross income. Internal Revenue Code section 62(13), as added by Pub. L. No. 94-455,

90 Stat. 1520, 1559 (1976). That petitioner, on his 1978 Federal income tax return, properly claimed the alimony payments as an adjustment to income pursuant to Internal Revenue Code section 62(13).

C. That the New York adjusted gross income of a resident individual is his Federal adjusted gross income for that year, subject to the modifications specified by section 612 of the Tax Law.

D. That the adjusted gross income of a nonresident individual is defined by section 632(a)(1) of the Tax Law as the net amount of income, gain, loss and deduction entering into his federal adjusted gross income, derived from or connected with New York sources. Income and deductions from New York sources is defined by subdivision (b) of the same section, as follows:

"(1) Items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to:

\* \* \*

(B) a business, trade, profession or occupation carried on in this state."

E. That alimony is not a deduction attributable to petitioner's profession carried on in this state, within the meaning of section 632(b)(1)(B) of the Tax Law. See Matter of Daniel C. Maclean, New York State Tax Commission, May 15, 1981 and Matter of Lance J. Friedsam, New York State Tax Commission, March 17, 1982.

F. That the petition of Joseph Barcia is denied and the Notice of Deficiency dated November 28, 1980 is sustained, together with such additional interest as may be lawfully due and owing.

DATED: Albany, New York

JAN 14 1983


STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

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COMMISSIONER

Commissioner Friedlander dissents in accordance with his appended dissents in the matters of Lance J. Friedsam and Steven M. Goldring dated March 17, 1982 and November 9, 1982, respectively.

  
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COMMISSIONER