

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Don Bernstein	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1975.	:	

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Don Bernstein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Don Bernstein
110 15 71st Road #1M
Forest Hills, NY 11375

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
10th day of November, 1983.

Martha L. Brunelle

Connie A. Hagelund

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

November 10, 1983

Don Bernstein
110 15 71st Road #1M
Forest Hills, NY 11375

Dear Mr. Bernstein:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DON BERNSTEIN	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioner, Don Bernstein, 110-15 71st Road, #1M, Forest Hills, New York 11375, 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. 32578).

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 February 10, 1983 at 10:45 A.M., with all briefs to be submitted by March 30, 1983. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is properly entitled to a greater deduction for medical and dental expenses than that allowed as the result of a Federal audit.

FINDINGS OF FACT

1. Don Bernstein (hereinafter petitioner) filed a New York State Income Tax Resident Return for the year 1975 whereon he claimed an adjustment to income for employee business expenses of \$3,983.00. On his Federal return, petitioner claimed an adjustment to income for employee business expenses of only \$2,483.00.

2. On August 23, 1977, the Audit Division issued a Statement of Audit Changes to petitioner wherein an adjustment of \$1,500.00 was made reducing petitioner's claimed adjustment to income to that amount claimed for Federal purposes. Additionally, the following applicable New York State adjustments were made to conform with the Internal Revenue Service audit report dated September 20, 1976:

<u>ITEM</u>	<u>CLAIMED</u>	<u>ALLOWED</u>	<u>ADJUSTMENT</u>
Business expenses (per Federal return)	\$2,483.00	\$402.00	\$2,081.00
Contributions	\$ 710.00	\$600.00	\$ 110.00
Medical and dental expenses	<u>-0-</u>	<u>\$ 65.00</u>	<u>(\$ 65.00)</u>
Total Federal Adjustment Applicable to New York State			<u>\$2,126.00</u>

3. On April 4, 1978, a revised Statement of Audit Changes was issued to petitioner wherein the following adjustments were incorporated into the computation of tax based on a revised Internal Revenue Service audit report dated September 20, 1977:

<u>ITEM</u>	<u>PER ORIGINAL FEDERAL AUDIT OR AS CLAIMED ON RETURN</u>	<u>CORRECTED AMOUNT</u>	<u>ADJUSTMENT</u>
Business expenses	\$402.00	\$1,854.34	(\$1,452.34)
Gas tax	\$360.00	\$ 13.00	\$ 347.00
Business publication	-0-	\$ 75.00	(\$ 75.00)
Total Adjustments			<u>(\$1,180.34)</u>

As a result of the Federal re-audit, the net Federal adjustment applicable to New York State was \$945.66. This amount, plus the aforesaid adjustment of \$1,500.00, yielded a final total adjustment for New York State purposes of \$2,445.66. Accordingly, a Notice of Deficiency was issued against petitioner on August 31, 1979 asserting additional personal income tax of \$128.30, plus interest of \$47.41, for a total due of \$175.71.

4. Petitioner contended that he is properly entitled to a greater deduction for medical and dental expenses than \$65.00, said amount being the allowance for such expenses credited to petitioner pursuant to the Federal audit reports and consequently allowed for New York State purposes.

5. During and subsequent to the hearing held herein, petitioner submitted acceptable documentary evidence establishing expenditures during 1975 for drugs of \$40.54, doctors, dentists, etc. of \$425.00, and medical insurance premiums of \$346.56. Petitioner was not reimbursed for any of these expenses incurred.

6. Petitioner's corrected Federal adjusted gross income, as modified by the audit changes of September 20, 1976 and September 20, 1977, is \$12,930.66.

7. On September 26, 1980, petitioner made a payment of \$60.00 toward the deficiency at issue herein.

CONCLUSIONS OF LAW

A. That petitioner is properly entitled to an additional allowance for medical and dental expenses of \$318.64, computed as follows:

Medicines and drugs	\$ 40.54	
Less 1% of corrected adjusted gross income	<u>\$129.31</u>	
Net allowable medicines and drugs		\$ -0-
Medical insurance premiums		\$346.56
Expenses for doctors, dentists, etc.		<u>425.00</u>
Total		<u>\$771.56</u>
Less 3% of corrected adjusted gross income		<u>387.92</u>
Allowable deduction for medical and dental expenses		<u>\$383.64</u>
Less allowance pursuant to Federal audit		<u>65.00</u>
Additional Allowance		<u>\$318.64</u>

B. That the petition of Don Bernstein is granted to the extent provided in Conclusion of Law "A", supra, and except as so granted, said petition is, in all other respects, denied.


C. That petitioner is properly entitled to credit against the deficiency herein for the payment of \$60.00 made on September 26, 1980.

D. That the Audit Division is hereby directed to modify the Notice of Deficiency dated August 31, 1979 to be consistent with the decision rendered herein.

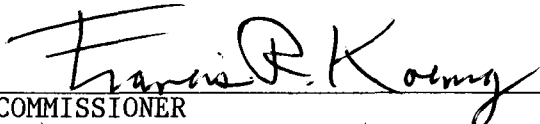
DATED: Albany, New York

STATE TAX COMMISSION

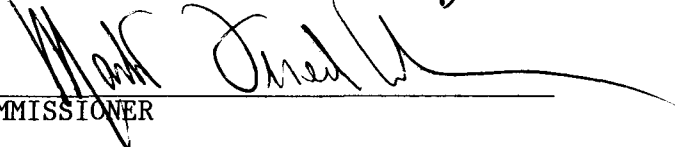
NOV 10 1983



PRESIDENT



COMMISSIONER



COMMISSIONER