

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of

Sherwood Harris

and Lorna Harris

: 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 :  
Years 1976 & 1977.

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State of New York

County of Albany

David Parchuck, 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 May, 1983, he served the within notice of Decision by certified mail upon Sherwood Harris, and Lorna Harris the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sherwood Harris  
and Lorna Harris  
Old Post Road  
Bedford, NY 10506

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 May, 1983.

David Parchuck

Janice P. Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Sherwood Harris :  
and Lorna Harris :

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 :  
Years 1976 & 1977.

State of New York  
County of Albany

David Parchuck, 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 May, 1983, he served the within notice of Decision by certified mail upon Morris R. Sherman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morris R. Sherman  
150 Broadway  
New York, NY 10038

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 May, 1983.

David Parchuck

James A. Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

May 6, 1983

Sherwood Harris  
and Lorna Harris  
Old Post Road  
Bedford, NY 10506

Dear Mr. & Mrs. Harris:

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  
Morris R. Sherman  
150 Broadway  
New York, NY 10038  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
SHERWOOD HARRIS AND LORNA HARRIS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1976 and 1977.	:	

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Petitioners, Sherwood Harris and Lorna Harris, Old Post Road, Bedford, New York 10506 filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1976 and 1977 (File No. 32808).

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 14, 1982 at 10:45 A.M. Petitioner Sherwood Harris appeared with Morris R. Sherman, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner Sherwood Harris is properly entitled to an educational expense deduction in each of the years 1976 and 1977.

FINDINGS OF FACT

1. Sherwood Harris and Lorna Harris timely filed a combined New York State Income Tax Resident Return for each of the years 1976 and 1977 whereon miscellaneous deductions were claimed in the amounts of \$1,029.00 and \$2,354.00 respectively.

2. On January 3, 1980 petitioners filed amended returns whereon their claimed miscellaneous deductions were increased to \$4,327.00 (1976) and \$8,961.00

(1977). The additional amounts claimed of \$3,298.00 (1976) and \$6,607.00 (1977) represented previously unclaimed educational expenses incurred by Sherwood Harris (hereinafter petitioner) for flight instruction courses. Pursuant to such amended returns, refunds of \$356.66 and \$892.23 were claimed for 1976 and 1977 respectively.

3. On September 12, 1980, the Audit Division issued a notice to petitioners wherein they were advised that their refund claims were disallowed in full on the basis that "Education expense for flight and ground instruction...qualify the taxpayer for a new trade or business." On November 24, 1980, a formal Notice of Disallowance was issued whereon it was stated that "Education expenses claimed were not used to maintain or improve your skills in your primary trade as an editor with Readers Digest. Therefore your claims for 1977 and 1976 overpayments are disallowed in full."

4. Petitioner contended that the expenses incurred for the courses taken during the years at issue are properly deductible as education expenses since the courses were taken to improve his skills as a flight instructor.

5. During the years at issue petitioner was employed as an editor on a full-time basis by Readers Digest. His compensation received from said employer for 1976 and 1977 was \$32,547.15 and \$38,081.12 respectively. Additionally, he received wages as a flight instructor during said years as follows:

<u>Year</u>	<u>Employer</u>	<u>Income</u>
1976	Stormville Flight School	<u>\$265.05</u>
1977	Stormville Flight School	333.10
1977	Connecticut Air Service, Inc.	507.33
Total 1977 Flight Instruction Income		<u>\$840.43</u>

6. Petitioner's flight instruction compensation was based on an hourly rate, ranging from \$7.50 to \$9.50 per hour during the years at issue. His flight instruction services were rendered on Saturdays, commencing after

July 14, 1976. On such date petitioner received a certificate for completion of a course entitled "Certified Flight Instructor - Airplane". Prior to receipt of said certificate, petitioner was not legally qualified to give flight instruction. Education expenses claimed which were incurred during the period January 1, 1976 through July 14, 1976, relating to petitioner's qualification as a flight instructor, were \$2,061.01.

7. Other courses taken by petitioner to which the education expenses at issue relate were as follows:

- 1976 - Certified Flight Instructor - Instrument
- 1977 - Certified Flight Instructor - Multi-engine
- 1977 - Course for qualification as an airplane  
transport pilot

A breakdown of expenses attributable to each of the courses taken in 1977 was not provided by petitioner.

8. Petitioner became a Naval aviator in 1956 and served on active duty until 1957. Subsequently, in 1958 he joined the Naval Reserve from which he departed in 1969. Toward the end of his reserve career he was assigned as a flight instructor. Subsequent to petitioner's departure from the Naval Reserve he rendered no services as a flight instructor until the years at issue herein.

9. Prior to taking the courses at issue petitioner had proper licenses for pleasure flying and some types of flying for hire.

10. Petitioner's income from flight instruction was quite low during the years at issue since he was not engaged in such activity until the latter part of 1976, and in 1977 he had undergone major surgery which limited his activities during 1977 and 1978.

11. Petitioner's income derived from flight instruction during years subsequent to those at issue herein was as follows:

<u>Year</u>	<u>Income</u>
1978	\$ 664.00
1979	1,666.00
1980	1,440.30
1981	1,948.75

12. Substantiation of petitioner's claimed expenses is not at issue herein. The only issue is with respect to whether by nature, such expenses constituted bona fide deductible education expenses.

13. Petitioner applied for 1976 and 1977 Federal income tax refunds on a basis identical to that at issue herein. As the result of such application, petitioner's claimed refunds were granted by the Internal Revenue Service.

#### CONCLUSIONS OF LAW

A. That Treasury Regulation §1.162-5(a) provides in pertinent part that:

Expenditures made by an individual for education...which are not expenditures of a type described in paragraph (b)(2) or (3) of this section are deductible as ordinary and necessary business expenses...if the education --

(1) Maintains or improves skills required by the individual in his employment or other trade or business, or

(2) Meets the express requirements of the individual's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation.

B. That Treasury Regulation §1.162-5(b) provides in pertinent part that:

(1) Educational expenditures described in subparagraphs (2) and (3) of this paragraph are personal expenditures or constitute an inseparable aggregate of personal and capital expenditures and, therefore, are not deductible as ordinary and necessary business expenses even though the education may maintain or improve skills required by the individual in his employment or other trade or business or may meet the express requirements of the individual's employer or of applicable law or regulations.

(2) Minimum educational requirements. (i) The first category of nondeductible educational expenses within the scope of subparagraph (1) of this paragraph are expenditures made by an individual for education which is required of him in order to meet the minimum educational requirements for qualification in his employment or other trade or business.

(3) Qualification for new trade or business. (i) The second category of nondeductible educational expenses within the scope of subparagraph (1) of this paragraph are expenditures made by an individual for education which is part of a program of study being pursued by him which will lead to qualifying him in a new trade or business. In the case of an employee, a change of duties does not constitute a new trade or business if the new duties involve the same general type of work as is involved in the individual's present employment.

C. That the expenses of \$2,061.01 incurred relative to the course "Certified Flight Instructor - Airplane" taken by petitioner in 1976, were for education which was required of him in order to meet the minimum educational requirement for qualification as a flight instructor. As such, said expenses are nondeductible within the meaning and intent of Treasury Regulation §1.162-5(b)(2).

D. That the balance of petitioner's education expenses incurred during 1976, which were with respect to a course taken entitled "Certified Flight Instructor - Instruments", are properly deductible education expenses pursuant to Treasury Regulation §1.162-5(a)(1).

E. That the expenses incurred by petitioner during 1977 with respect to a course taken for qualification as an airline transport pilot are nondeductible education expenses within the meaning and intent of Treasury Regulation §1.162-5(b)(3).

F. That although the expenses incurred by petitioner during 1977 with respect to a course taken entitled "Certified Flight Instructor - Multi-engine" may be deductible education expenses, no deduction is allowed since petitioner failed to show the extent such total expenses claimed in 1977 were applicable to this course.

G. That the petition of Sherwood Harris and Lorna Harris is granted to the extent provided in Conclusion of Law "D", supra, and except as so granted, said petition is, in all other respects, denied.

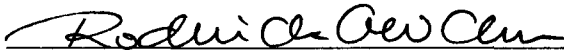


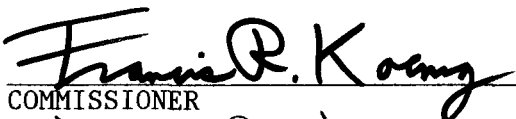
H. That the Audit Division is hereby authorized to grant a refund to petitioners in an amount to be computed based on the allowance of a portion of their claimed expenses as provided in Conclusion of Law "D", supra.

DATED: Albany, New York

MAY 06 1983

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER