

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of

Albert E. McFerran, Jr.

And Mary P. McFerran : 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 :  
1979.

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State of New York  
County of Albany

Connie Hagelund, 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 29th day of June, 1983, she served the within notice of Decision by certified mail upon Albert E. McFerran, Jr. and Mary P. McFerran the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Albert E. McFerran, Jr.  
And Mary P. McFerran  
131 Clermont St.  
Albany, NY 12203

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  
29th day of June, 1983.

  
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AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

June 29, 1983

Albert E. McFerran, Jr.  
And Mary P. McFerran  
131 Clermont St.  
Albany, NY 12203

Dear Mr. & Mrs. McFerran:

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: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ALBERT E. MCFERRAN, JR. and MARY P. MCFERRAN : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1979. :

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Petitioners, Albert E. McFerran, Jr. and Mary P. McFerran, 131 Clermont Street, Albany, New York 12203, 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 1979 (File No. 32569).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on January 12, 1982 at 10:45 A.M. Petitioner Albert E. McFerran appeared pro se and for his wife. The Audit Division appeared by Paul B. Coburn, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether petitioners are entitled to claim, as miscellaneous itemized deductions, an estimated lost salary of \$18,000.00 and loan repayments of \$5,630.00.

FINDINGS OF FACT

1. Petitioners, Albert E. McFerran, Jr. and Mary P. McFerran, timely filed a joint New York State Income Tax Resident Return claiming that a refund was due them in the amount of \$793.57. Total New York income reported on said return amounted to \$22,864.00, while the claimed New York itemized deduction totaled \$28,509.00. Included in the New York itemized deduction figure was a

\$23,630.00 miscellaneous deduction for lost salary of \$18,000.00 and loan repayments of \$5,630.00.

2. The Audit Division did not authorize the refund of \$793.57 as requested on petitioners' return, but instead, issued a Statement of Refund Adjustment where the following explanation and recomputation was offered:

State and local income tax refunds are not taxable to New York State and should be subtracted on line 2.

Future earnings which employees would have earned do not constitute a deductible loss. Also, inability to obtain full employment does not give rise to a loss. Therefore, the maintenance of income total exclusion of \$23,630.00 consisting of estimated salary of \$18,000.00 and repayment of loans, etc. is disallowed.

RECOMPUTATION

Income per return	\$22,864.00
Less: State and local income tax refunds	565.00
New York income	\$22,299.00
Itemized deductions less \$23,630.00 loss disallowed	4,522.00
Balance	\$17,777.00
Exemptions	4,200.00
Taxable income	\$13,577.00
 Tax	 \$ 731.93
Tax withheld	793.57
Refund	\$ 61.64
Interest	1.92
Total	\$ 63.56

3. Pursuant to the above mentioned Statement of Refund Adjustment, the Audit Division, via notice of disallowance dated November 18, 1980, formally advised petitioners that their \$793.57 claim for refund was allowed in the amount of \$61.64 and disallowed in the amount of \$731.93. A check in the amount of \$63.56 from the Department of Taxation and Finance made payable to petitioners was returned by said petitioners as unacceptable.

4. Prior to the tax year in question, petitioner Albert E. McFerran, Jr. had been a tenured school teacher with the Enlarged City School District of

Troy, New York. For approximately the last 11 years Mr. McFerran has been involved in a rather long and protracted legal battle with the school district, first over a salary dispute and next over an indefinite suspension which occurred on January 8, 1975. As of the date of this hearing, petitioner Albert E. McFerran, Jr. had not been reinstated by the school district.

5. Petitioner Albert E. McFerran, Jr. believes that he was illegally suspended from his employment and should, therefore, be entitled to deduct the estimated salary of \$18,000.00 which he never received. Due to his lack of full time employment, Mr. McFerran was required to take out loans in order to meet everyday expenses. He contends that the repayment of these loans, both principal and interest, are also deductible. Petitioners claimed deduction for loan repayments, including both principal and interest, totaled \$5,630.00. The portion of the loan repayments which represented interest charges totaled \$726.53.

6. Petitioners incorrectly totaled the New York itemized deduction on page 2, Schedule B of their return. The New York itemized deduction, when properly totaled, amounts to \$31,115.43, and not \$28,509.00 as shown on the return.

#### CONCLUSIONS OF LAW

A. That there are no provisions in either the Internal Revenue Code or Article 22 of the New York State Tax Law which would permit petitioners to claim, as deductions, the estimated lost salary of \$18,000.00 and the loan repayments of \$5,630.00. The United States Tax Court opined in Bostick v. Commissioner, 16 TCM 1008, that "It is well established that failure to receive expected income does not give rise to a deductible loss" and that "The loss of work which produces wages does not give rise to any loss deduction under the

Internal Revenue Code". (Also see: Marks v. Commissioner, 25 TCM 338, aff'd 390 F2d 598.)

B. That the portion of the disallowed loan repayments which represent interest charges, i.e. \$726.53, are properly deductible as an additional interest expense under section 163 of the Internal Revenue Code. That the allowable New York itemized deduction, after correction of the addition error referred to in Findings of Fact "6", supra, is \$8,211.96, computed as follows:

New York itemized deduction from	
Schedule B as correctly totaled	\$31,115.43
Less: Disallowed deduction for lost	
salary and loan repayments	23,630.00
Balance	\$ 7,485.43
Add: Additional interest expense	726.53
Allowable New York Itemized Deduction	<u>\$ 8,211.96</u>

C. That the Audit Division failed to give petitioners credit for the household credit pursuant to section 606(b) of the Tax Law. Accordingly, petitioners' personal income tax liability for the year 1979 is to be reduced by a household credit of \$35.00.

D. That the petition of Albert E. McFerran, Jr. and Mary P. McFerran is granted to the extent indicated in Conclusions of Law "B" and "C", supra; that the Audit Division is directed to recompute petitioner's 1979 New York State personal income tax liability consistent with the decision rendered herein; that the Audit Division is directed to authorize a refund to petitioners of any overpayment plus interest; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUN 29 1983

STATE TAX COMMISSION

Rodnick W. Chen  
PRESIDENT

Francis Q. Kang  
COMMISSIONER

Mark J. [illegible]  
COMMISSIONER