

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Milton A. & Frances G. Ross	:	
for Redetermination of a Deficiency or Revision	:	AFFIDAVIT OF MAILING
of a Determination or Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1977.	:	

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of December, 1983, he served the within notice of Decision by certified mail upon Milton A. & Frances G. Ross, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Milton A. & Frances G. Ross  
76 Dehaven Dr. #4L  
Yonkers, NY 10703

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
20th day of December, 1983.

David Parchuck

Carroll A. Haggard  
pursuant to Tax Law section 174

Authorized to administer oaths

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

December 20, 1983

Milton A. & Frances G. Ross  
76 Dehaven Dr. #4L  
Yonkers, NY 10703

Dear Mr. & Mrs. Ross:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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

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In the Matter of the Petition	:	
of	:	
MILTON A. ROSS AND FRANCES G. ROSS	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the year 1977.	:	

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Petitioners, Milton A. Ross and Frances G. Ross, 76 Dehaven Drive #4L, Yonkers, New York 10703, 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 1977. (File No. 34289).

A small claims hearing was held before Anthony J. Ciarlone, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 12, 1983 at 1:15 P.M. Petitioner Milton A. Ross appeared pro se and for his wife Frances G. Ross. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

- I. Whether petitioners' New York State income tax return was in conformity with their Federal income tax return prior to the Federal audit.
- II. Whether the Audit Division is barred by the statute of limitations from making adjustments to petitioners' New York income tax return to conform said return to petitioners' Federal income tax return.

FINDINGS OF FACT

1. Petitioners, Milton A. Ross and Frances G. Ross, timely filed their New York State income tax return for 1977. Petitioners signed their income tax return on March 20, 1978.

2. On August 28, 1980 the Audit Division issued to petitioners a Notice of Additional Tax Due which stated in part:

"...We have received notification of Federal audit changes and the following deficiency is based on failure to report such changes."

The notice imposed personal income tax of \$336.59, interest of \$67.72, for a total due of \$404.31. On January 7, 1981 the Audit Division issued a Statement of Audit Changes to petitioners with the following explanation:

"This document replaces our Notice of Additional Tax Due, dated August 28, 1980 which has been cancelled in full.

Your New York State income tax return must conform with your Federal income tax return, except for modifications as outlined in the New York State Tax Law.

This assessment is based on your Federal tax return and includes all Federal audit changes, including the ones made while originally being processed."

On April 1, 1981 the Audit Division issued a Notice of Deficiency to petitioners imposing personal income tax of \$163.17, interest of \$40.82, for a total due of \$203.99.

3. On their New York income tax return petitioners reported income of \$18,253.50, adjustment to income of \$1,985.16 and itemized deductions of \$4,046.43. On their Federal income tax return petitioners reported income of \$18,253.50, adjustment to income of \$4,304.57 and itemized deductions of \$5,002.60. Included in Federal itemized deductions was a deduction for New York State income taxes which petitioners properly excluded from their New York itemized deductions. However, the medical expense deduction was higher for New York State tax purposes than for Federal tax purposes. Petitioners offered no explanation for the difference between a net medical expense claimed of \$1,623.70 for New York and a net medical expense claimed of \$1,454.70 for Federal.

4. Petitioners on their Federal income tax return claimed an adjustment to income for business use of car as an employee business expense. As a result of an audit by the Internal Revenue Service, the adjustment to income was disallowed. Petitioner Milton Ross used his car in his employment and he was reimbursed by his employer for the use of the car.

5. Petitioners were audited by New York State in a prior year at which time the state auditor had disallowed the adjustment to income for business use of car. Thereafter, petitioners still claimed the adjustment to income on their Federal income tax return because Mr. Ross stated that he was allowed the adjustment on a Federal audit. No evidence was submitted to show petitioners were audited by the Internal Revenue Service in a prior year. For New York State tax purposes petitioners claimed only an adjustment for the use of the car to and from work; Mr. Ross claimed the adjustment as a medical adjustment. He had attached to his New York State income tax return a letter from his doctor which stated in part:

"In a patient with this degree of heart disease, I feel that the only suitable means of transportation is by the use of an automobile and I have so advised him of this."

Mr. Ross claimed that since the adjustment to income was allowed on a prior Federal audit and disallowed on a State audit, his filing of the New York State income tax was in conformity.

6. The Audit Division in recomputing petitioners' New York State taxable income allowed petitioners the same amount of itemized deductions less the deduction for state and local income taxes as were allowed by the Internal Revenue Service for Federal income tax purposes.

7. Mr. Ross stated that the Audit Division cannot adjust his New York State income tax return to conform with his Federal income tax return, since

the statute of limitations expired. He further stated that if the Audit Division has a right to "amend" his return, he has a right to the adjustment to income, since the adjustment on the State income tax return was a medical allowance for use of his car to and from work.

#### CONCLUSIONS OF LAW

A. That the New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with modifications which are not present herein (section 612(a) of the Tax Law).

B. That petitioners are required by the Tax Law to conform their New York adjusted gross income to their Federal adjusted gross income. There is no provision in the Tax Law which allows petitioners to claim an adjustment to income for New York State income tax purposes different than the adjustment to income for Federal income tax purposes. Petitioners submitted no evidence to show that the adjustment to income was audited by the Internal Revenue Service in a prior year and that the adjustment to income was allowed. However, there is evidence that the Internal Revenue Service audited petitioners' 1977 Federal income tax return and that the adjustment to income was disallowed. Petitioners' New York State income tax return for 1977 was not in conformity with their Federal income tax return prior to the Federal audit.

C. That since the adjustment to income claimed for New York income tax purposes is not an expense paid for transportation primarily for and essential to the rendition of medical care within the meaning and intent of Treasury Regulation §1.213-1(e)(iv), the expense is not a medical deduction. Further, petitioners' claim that it is a medical expense is mitigated by the fact that Mr. Ross used the car in the performance of his duties for his employer.

Further, since the adjustment to income consisted of expenses for commuting back and forth to work, the expense is not an allowable adjustment to income in accordance with Treasury Regulation §1.262-1(a)(5).

D. That any tax under this article shall be assessed within three years after the return was filed (section 683(a) of the Tax Law). For the purposes of section 683 of the Tax Law a return of income tax filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day (section 683(b)(1) of the Tax Law). Section 651(a) of the Tax Law requires an income tax return to be made and filed on or before the fifteenth day of the fourth month following the close of the taxable year.

E. That petitioners were required to file their income tax return on or before April 15, 1978. Even though petitioners signed their income tax return on March 20, 1978, in accordance with section 683(b)(1) of the Tax Law the income tax return was deemed to be filed on April 15, 1978. Since the Notice of Deficiency was dated April 1, 1981 and since said date was within the three year limitation period for assessments prescribed by section 683(a) of the Tax Law, the Audit Division was not barred from making adjustments to petitioners' income tax return.

F. That the petition of Milton A. Ross and Frances G. Ross is denied and the Notice of Deficiency dated April 1, 1981 is sustained.

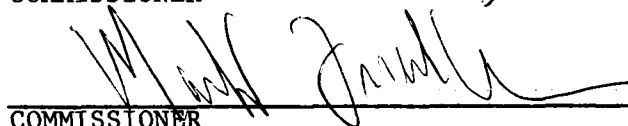
DATED: Albany, New York

STATE TAX COMMISSION

DEC 20 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER