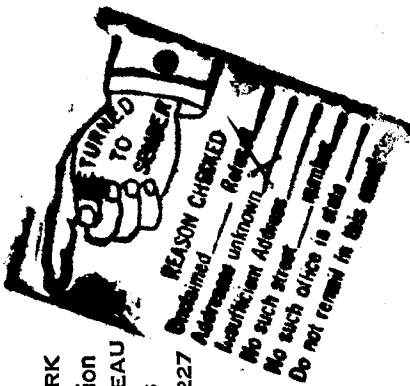


TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS

ALBANY, N. Y. 12227



Milton Shaiman
2102 Jericho Tpke.
Commack, NY 11725

DATE

☐ HOLD

CLAIM CHECK NO.

Detached from
PS Form 3848-A
Feb. 1978

RETURN

2ND NOTICE

1ST NOTICE

CERTIFIED MAIL

7-10-80

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

January 3, 1983

William Schwartz
and Frances Schwartz
211-35 23rd Ave.
Bayside, NY 11360

Dear Mr. & Mrs. Schwartz:

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
Milton Shaiman
2102 Jericho Tpke.
Commack, NY 11725
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
WILLIAM SCHWARTZ and FRANCES SCHWARTZ	:	DECISION
for Redetermination of Deficiencies or for Re-	:	
fund of Personal Income Taxes under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioners, William Schwartz and Frances Schwartz, 211-35 23rd Avenue, Bay-side, New York 11360, filed petitions for redetermination of deficiencies or for refund of personal income taxes under Article 22 of the Tax Law for the year 1975 (File Nos. 21295 and 21296).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 16, 1979 at 10:45 A.M. Petitioners appeared by Milton Shaiman, CPA. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

- I. Whether severance pay received by petitioner William Schwartz is properly includable in his New York adjusted gross income.
- II. Whether petitioner William Schwartz properly claimed a sick pay exclusion.
- III. Whether petitioners are entitled to a deduction for medical and dental expenses.

FINDINGS OF FACT

1. Petitioners, William Schwartz and Frances Schwartz, timely filed a New York State Combined Income Tax Resident Return for the taxable year 1975.

2. On January 30, 1978, the Audit Division issued a Statement of Audit Changes to each petitioner wherein amounts claimed for medical and dental expenses and a sick pay exclusion were disallowed in full since petitioners failed to appear for a conference. Additionally, an adjustment was made increasing petitioner William Schwartz's taxable income by \$7,800.00. Said amount as contended by the Audit Division, represented wages earned from the Zayre Corporation, Farmingham, Massachusetts. Accordingly, on January 30, 1978, a Notice of Deficiency was issued against petitioner William Schwartz, asserting additional tax of \$537.88, plus interest of \$82.04, for a total due of \$619.92. A Notice of Deficiency was also issued under the same date against petitioner Frances Schwartz, asserting additional tax of \$126.44, plus interest of \$19.28, for a total due of \$145.72.

3. Petitioner William Schwartz contended that the monies received from the Zayre Corporation represented severance pay, which he continuously received from said corporation commencing in 1972, through an undetermined part of the 1975 taxable year, as the result of employment termination. The severance pay was not paid pursuant to a written contract or agreement and was not payable for a predetermined number of months or years. Until such time that Zayre Corporation ceased making payments, petitioners had no idea as to the duration that said payments would be received.

4. Petitioner, William Schwartz, purported that the severance pay at issue was not taxable to New York State since it was derived from services previously rendered in the State of Georgia during which time he was a resident of said State.

5. Petitioner, William Schwartz, was employed at the Atlanta, - eorgia branch office of the Zayre Corporation from 1961 through 1971. During this period he resided with his wife in the State of Georgia. After his employment terminated, petitioners, in January 1972, moved to New York, where they continue to reside to this date.

6. Petitioner, William Schwartz, claimed a sick pay exclusion in the amount of \$2,080.00 as computed on Federal Sick-Pay Exclusion form 2140. Said exclusion resulted from a heart attack suffered by petitioner on July 6, 1975. His resulting period of absence from work during the taxable year at issue began on said date and continued through the close of the tax year. During his period of absence, his employer, Saks Fifth Avenue, paid him sick pay in the amount of \$3,210.00.

7. Petitioners claimed a net medical and dental expense deduction in the amount of \$2,262.12. Acceptable documentary evidence was submitted verifying bona fide deductible expenditures for medical, dental and other related expenses of \$2,771.50 and gross medicines and drugs of \$395.00.

CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides 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 the modifications specified in this section".

Since the severance pay at issue was properly included in petitioners' federal adjusted gross income, and the "Modifications reducing federal adjusted gross income" as enumerated under section 612(c) of the Tax Law does not provide for exemption of said income, the severance pay received by petitioner William Schwartz in the amount of \$7,800.00, from the Zayre Corporation, is includable in his New York adjusted gross income.

B. That the sick pay exclusion claimed by petitioner William Schwartz in the amount of \$2,080.00 is a proper adjustment to income in accordance with the meaning and intent of section 105(d) of the Internal Revenue Code and Article 22 of the Tax Law.

C. That a deduction for medical and dental expenses is granted to petitioners William Schwartz and Frances Schwartz in the amount of \$2,349.62 within the meaning and intent of sections 213(a) (1) and 213(b) of the Internal Revenue Code.

D. That the petitions of William Schwartz and Frances Schwartz are granted to the extent provided in Conclusions of Law "B" and "C"; that the Audit Division is hereby directed to accordingly modify the notices of deficiency dated January 30, 1978; that the recomputed tax due shall be together with such interest as may be lawfully owing and; that except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

JAN 3 1983

STATE TAX COMMISSION

Acting *Robert A. Burchard*
PRESIDENT

Frank R. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER