

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
Samson A. Seley

:  
:  
: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
NYS & NYC Income Tax :  
under Article 22 & 30 of the Tax Law :  
for the Years 1977 & 1978. :

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State of New York  
County of Albany

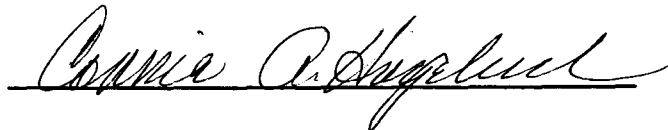
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Samson A. Seley, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samson A. Seley  
10275 Collins Ave.  
Bal Harbour, FL 33154

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  
15th day of July, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Samson A. Seley :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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NYS & NYC Income Tax :  
under Article 22 & 30 of the Tax Law :  
for the Years 1977 & 1978. :

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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 15th day of July, 1983, she served the within notice of Decision by certified mail upon Nelson D. Spiro the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

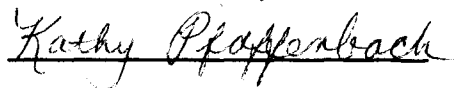
Nelson D. Spiro  
350 Fifth Ave.  
New York, NY 10118

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  
15th day of July, 1983.





**AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174**

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

July 15, 1983

Samson A. Seley  
10275 Collins Ave.  
Bal Harbour, FL 33154

Dear Dr. Seley:

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 & 1312 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  
Nelson D. Spiro  
350 Fifth Ave.  
New York, NY 10118  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
SAMSON A. SELEY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York for	:	
the Years 1977 and 1978.	:	

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Petitioner, Samson A. Seley, 10275 Collins Avenue, Bal Harbour, Florida 33154, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1977 and 1978 (File No. 33030).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 29, 1982 at 9:00 A.M., with all briefs to be submitted by December 11, 1982. Petitioner appeared by Nelson D. Spiro, C.P.A. The Audit Division appeared by Paul B. Coburn, Esq. (Anna Colello, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly disallowed a portion of petitioner's claimed telephone expenses for the years 1977 and 1978 as being personal expenses and not ordinary and necessary business expenses.

II. Whether the Audit Division properly reduced the cost basis of property sold by petitioner during the year 1978 from \$28,834.00 to \$2,000.00.

FINDINGS OF FACT

1. Petitioner herein, Samson A. Seley, timely filed New York State and New York City resident income tax returns for the years 1977 and 1978. On said returns petitioner reported as business income the net profit generated from his practice of medicine. In computing net profit, petitioner, for the year 1977, deducted \$1,090.65 for telephone and answering service expenses; while for the year 1978 the telephone and answering service expenses totaled \$518.89. Petitioner's 1978 return also reported a net long-term capital gain of \$4,674.75 from the sale of real property located in Lake Mohegan, New York. Said property was sold for \$33,508.75 and after subtraction of a claimed cost basis of \$28,834.00, a net gain of \$4,674.75 resulted.

2. On March 20, 1981, the Audit Division issued a Notice of Deficiency to petitioner for the years 1977 and 1978, asserting that \$3,272.49 of New York State and New York City personal income tax was due, together with interest of \$547.43, for a total due of \$3,819.92.

3. Said Notice of Deficiency was premised on a Statement of Personal Income Tax Audit Changes dated May 6, 1980, wherein the Audit Division disallowed a portion of claimed telephone expenses as being personal in nature. The portion disallowed for 1977 amounted to \$240.00, while the amount disallowed for 1978 totaled \$120.00. The Audit Division also disallowed, as unsubstantiated, \$26,834.00 of the claimed cost basis on the sale of the real property located in Lake Mohegan, New York. Other adjustments were also made by the Audit Division which petitioner does not contest and, therefore, same will not be addressed hereinafter.

4. The record in this matter contains no evidence showing a breakdown of that portion of the claimed telephone and answering service expenses which were solely telephone expenses. No documentary or other credible evidence was

adduced at the hearing held herein to show that the entire amount of claimed telephone expenses for 1977 and 1978 were connected with and attributable to petitioner's practice of medicine and that no portion of said total expenses were personal in nature.

5. In 1933 petitioner purchased an "unfinished house" located in Lake Mohegan, New York for \$2,000.00. Petitioner has submitted receipted invoices which substantiate that capital improvements were made to the Lake Mohegan property in the amount of \$8,691.93. Petitioner has also submitted an unsigned statement itemizing all of the alleged capital improvements made to the Lake Mohegan property from 1933 to 1970 and the estimated cost of said improvements (\$28,750.00). Petitioner did not testify at the hearing held herein.

#### CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Chapter 46, Title T.

B. That section 689(e) of the Tax Law places the burden of proof on petitioner. That petitioner has failed to sustain his burden to show that the portion of claimed telephone expenses disallowed as personal expenses (\$240.00 for 1977 and \$120.00 for 1978) were in fact expenses connected with and attributable to his practice of medicine and not personal in nature.

C. That petitioner has submitted acceptable evidence to support that the cost basis of the Lake Mohegan property was \$10,691.93 (\$2,000.00 purchase price plus \$8,691.93 in capital improvements as per Finding of Fact "5",

supra). That the balance of the claimed cost basis of the Lake Mohegan property of \$18,142.07 (\$28,834.00 - \$10,691.93) has been properly disallowed as unsubstantiated.

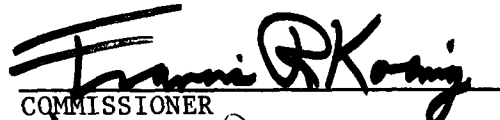
D. That the petition of Samson A. Seley is granted to the extent indicated in Conclusion of Law "C", supra; that the Audit Division is directed to recompute the Notice of Deficiency dated March 20, 1981 consistent with the decision rendered herein; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 15 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER