

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Yuan Taur	:	
	:	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 Year 1976.	:	
	:	

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 4th day of February, 1983, he served the within notice of Decision by certified mail upon Yuan Taur, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Yuan Taur
1306 Calle Pecos
Thousand Oaks, CA 91360

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
4th day of February, 1983.




AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

February 4, 1983

Yuan Taur
1306 Calle Pecos
Thousand Oaks, CA 91360

Dear Mr. Taur:

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 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
YUAN TAUR	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Taxes under Articles 22 and 30	:	
of the Tax Law for the Year 1976.	:	

Petitioner, Yuan Taur, 1306 Calle Pecos, Thousand Oaks, California 91360, filed a petition for redetermination of a deficiency or for refund of New York State and New York City income taxes under Articles 22 and 30 of the Tax Law for the year 1976 (File No. 30847).

On November 4, 1982 petitioner Yuan Taur waived his right to a small claims hearing and requested that a decision be rendered by the State Tax Commission on the basis of the entire file. After due consideration, the State Tax Commission hereby renders the following decision.

ISSUE

Whether petitioner is entitled to deduct child care expenses to arrive at his New York State and New York City adjusted gross income for tax year 1976.

FINDINGS OF FACT

1. On April 7, 1977, Yuan Taur (hereinafter petitioner) filed a New York State Income Tax Resident Return with New York City Personal Income Tax with his wife, Hwei-Yi Taur. During tax year 1976 petitioner and his wife were both residents of New York State and New York City. Petitioner and his wife reported separately on said return.

2. On Schedule A of the aforementioned return petitioner made a line 15 adjustment (deduction) of his income in the amount of \$1,950.00; said amount reflecting child care expenses incurred by petitioner and his wife during tax year 1976. This adjustment had the effect of reducing petitioner's New York adjusted gross income for 1976 in the same amount, \$1,950.00.

3. Upon receipt of information from the Internal Revenue Service which indicated that petitioner reported \$1,950.00 more in adjusted gross income for Federal purposes than for New York State purposes, a Statement of Audit Changes was issued by the Audit Division. The Statement was dated March 10, 1980 and stated:

"The starting point for computing the New York tax liability is Federal adjusted gross income. Therefore, your tax liability has been recomputed as shown."

Thereafter, petitioner's tax liability was recomputed by adding back the \$1,950.00 adjustment to New York adjusted gross income. This resulted in additional New York State personal income tax of \$163.65 and additional New York City personal income tax of \$50.28 for total taxes due of \$213.93 plus interest of \$52.75 for a total due of \$266.68.

On March 27, 1980 the Audit Division issued a Notice of Deficiency for the same amount of taxes reflected in the Statement of Audit Changes plus updated interest of \$53.60 for a total due of \$267.53.

4. Petitioner fully stated his position in his perfected petition filed with the Tax Appeals Bureau on June 28, 1982. Petitioner's perfected petition stated:

"I do not agree with the notice of tax deficiency on our 1976 N.Y. income tax because of the child care expenses incurred during that year. In the 1976 Federal Tax Returns, the child care expense was changed from an income adjustment to a tax credit, but the N.Y. State Taxation failed to make a similar change. What I had to do in the State Income Tax

Returns was to follow the same procedure prior to 1976 when the child care expense was an adjustment to gross income. In fact, I had consulted the matter with the State income tax information officer, and was advised that it was the correct way to report."

5. The Audit Division maintains the position that:

a. For tax years 1975 and prior, the Internal Revenue Service allowed an adjustment (deduction) for child care expenses to arrive at Federal adjusted gross income. Due to "Federal Conformity" with regards to computation of adjusted gross income, New York State indirectly allowed the same adjustment.

b. For tax years subsequent to 1975, a computed tax credit pursuant to section 44A of the Internal Revenue Code was allowed to compensate for child care expenses to replace the previously allowed adjustment to gross income for Federal tax purposes.

c. That because New York State did not adopt a similar tax credit until tax year 1977 and there was no adjustment to Federal adjusted gross income for 1976 that consequently, no New York State or New York City tax relief existed in 1976 for child care expenses.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions of 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 Article 30.

B. That section 44A of the Internal Revenue Code allows a tax credit for expenses incurred for child care expenses; said section was effective for tax years 1976 and later for Federal tax purposes. That section 606(c) of the Tax Law (as added by Laws of 1977, Ch. 59, effective April 12, 1977, and applicable to taxable years commencing after December 31, 1976) provides:

"(c) Credit for certain household and dependent care services necessary for gainful employment.

(1) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by section six hundred one of this article. Except as provided below, the amount of the credit shall be twenty percent of the credit allowed such taxpayer pursuant to the provisions of section forty-four-A of the Internal Revenue Code for the same taxable year. ..."

Section six hundred one, as referred to above, defines those persons subject to New York State Personal Income Tax, and petitioner herein falls within the definition of a person subject to said tax.

C. That section 612(a) defines New York adjusted gross income of a resident individual as :

"(a) General - 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." (emphasis added).

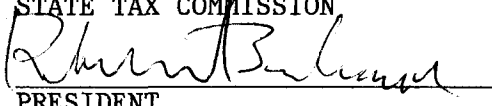

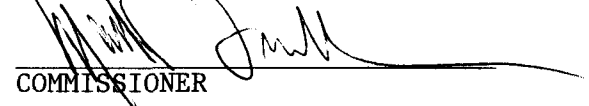
That no modification existed for tax year 1976 (or any other year) to allow for a deduction for child care expenses.

D. That in tax year 1976 there was no New York State Personal Income Tax credit allowed for child care expenses. That the New York State Tax Law did not allow, for the year 1976, an adjustment to or deduction from income for child care expenses.

E. That in accordance with Conclusion of Law "D", supra, the petition of Yuan Taur is denied and the Notice of Deficiency issued on March 27, 1980 is sustained together with any additional interest lawfully due and owing.

DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CERTIFIED
P 278 401 768
MAIL

TAU 06X 190838B1 02/08/83

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

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1306 Calle Pecos
Thousand Oaks, CA 91360

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c. That because New York State did not adopt a similar tax credit until tax year 1977 and there was no adjustment to Federal adjusted gross income for 1976 that consequently, no New York State or New York City tax relief existed in 1976 for child care expenses.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions of 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 Article 30.

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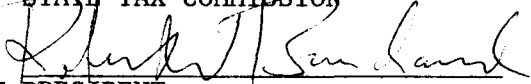
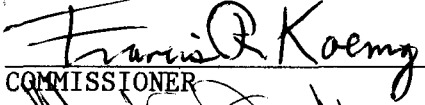
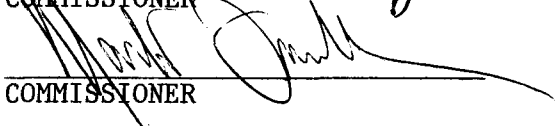
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DATED: Albany, New York

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