

STATE TAX COMMISSION

AFFIDAVIT OF MAILING

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

Ida Wallace
48 Buckingham Ct.
Pomona, NY 10970

Dear Ms. Wallace:

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 & 722 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
Joseph Chalfin
114 Liberty St.
New York, NY 10006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| IDA WALLACE | : | DECISION |
| for Redetermination of a Deficiency or for | : | |
| Refund of Personal Income and Unincorporated | : | |
| Business Taxes under Articles 22 and 23 of the | : | |
| Tax Law and New York City Nonresident Earnings | : | |
| Tax under Chapter 46, Title U of the | : | |
| Administrative Code of the City of New York | : | |
| for the Years 1975 and 1976. | : | |

Petitioner, Ida Wallace, 48 Buckingham Court, Pomona, New York 10970, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the years 1975 and 1976 (File No. 28350).

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 December 3, 1981 at 10:45 A.M. and continued on December 29, 1981 at 9:15 A.M. Petitioner appeared by Joseph Chalfin, P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (James F. Morris, Esq., of counsel).

ISSUES

I. Whether the audit adjustments were arbitrary, since petitioner was not given an opportunity to discuss the adjustments with the auditor.

II. Whether the audit adjustments were incorrect.

FINDINGS OF FACT

1. Petitioner, Ida Wallace, timely filed a 1975 New York State Income Tax Resident Return. Attached to said return was a 1975 New York State Unincorporated Business Tax Return. She timely filed a 1976 New York State Income Tax Resident Return. Attached to said return was a 1976 Nonresident Earnings Tax Return for the City of New York and a 1976 New York State Unincorporated Business Tax Return.

2. Based on a cash availability audit on January 11, 1979, the Audit Division issued a Statement of Audit Changes against petitioner proposing, for 1975, personal income tax of \$474.89 and unincorporated business tax of \$212.06, and for 1976, personal income tax of \$378.61, unincorporated business tax of \$201.91 and New York City nonresident earnings tax of \$24.10. Interest was applied to all tax amounts. Attached to the Statement of Audit Changes was a Schedule of Audit Adjustments which, among other adjustments, indicated a net adjustment per audit for 1975 for personal income of \$5,131.60. Included in said adjustment was a medical expense disallowance of \$505.00. On May 29, 1979, the Audit Division issued a Notice of Deficiency against petitioner asserting additional tax due of \$1,291.57, plus interest of \$273.43, for an amount due of \$1,565.00.

3. Petitioner, Ida Wallace, was not present at the hearing. Her representative argued that the Notice of Deficiency should be cancelled because the auditor was inexperienced, the petitioner was not given an opportunity to discuss the adjustments with the auditor and the adjustments were arbitrary. No evidence was submitted to show that the auditor was inexperienced. Petitioner's representative met the auditor's supervisor on October 14, 1977 and on April 30, 1981, petitioner's representative attended a conference to discuss the adjustments. At the conference he was given a copy of some of the auditor's worksheets. At

the hearing held on December 3, 1981, petitioner's representative was given all of the auditor's workpapers. The only adjustment which petitioner's representative showed was in error was the disallowed medical expense. This was incorrect because the cash expense was picked up as cash outlay but then disallowed as a medical deduction.

4. After the hearing, petitioner's representative submitted an "affidavit" from Ida Wallace in which she alleged that in 1975 and 1976 her son repaid loans she made to him. Petitioner did not appear at the hearing to testify about the loans. No documentary or other evidence was submitted to show that the loans were made or that they were paid in 1975 and 1976.

CONCLUSIONS OF LAW

A. That the burden of proof in showing that the Notice of Deficiency is arbitrary and incorrect is upon the petitioner (section 689(e) of the Tax Law and section U46-39.0(e) of Chapter 46, Title U of the Administrative Code of the City of New York).

B. That petitioner has sustained the burden of proof only in respect to the \$505.00 medical expense disallowance. In all other respects, the petitioner has failed to sustain the burden of proof to show that the Notice of Deficiency was arbitrary and incorrect, since petitioner was given ample opportunities to submit evidence to refute the deficiency and to be at the hearings to testify.

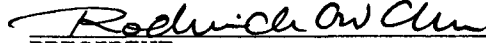
C. That the Audit Division is directed to modify the Notice of Deficiency by allowing the medical expense deduction. In all other respects, the petition


of Ida Wallace is denied and the Notice of Deficiency dated May 29, 1979 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER