

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Wladyslaw A. Wolski, Jr. :
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law for the Years 1974 and 1975. :

In the Matter of the Petition :
of :
Barbara L. Wolski :
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law for the Years 1974 and 1975. :

AFFIDAVIT OF MAILING

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In the Matter of the Petition :
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Olga Wolski :
for Redetermination of a Deficiency or for Refund :
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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 State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Olga Wolski, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Olga Wolski
c/o Louis F. Brush
96 Suffolk Lane
Garden City, NY 11530

Page 2

Affidavit of Mailing

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
10th day of November, 1983.

Martha L. Drunelle

James A. Hagedorn

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

November 10, 1983

Olga Wolski
c/o Louis F. Brush
96 Suffolk Lane
Garden City, NY 11530

Dear Ms. Wolski:

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 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
Louis F. Brush
96 Suffolk Lane
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

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Wladyslaw Wolski, Sr.
c/o Louis F. Brush
96 Suffolk Lane
Garden City, NY 11530

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Sworn to before me this
10th day of November, 1983.

Maucha L. Drunelle

Annice A. Haglund

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

November 10, 1983

Wladyslaw Wolski, Sr.
c/o Louis F. Brush
96 Suffolk Lane
Garden City, NY 11530

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State of New York
County of Albany

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Louis F. Brush
96 Suffolk Lane
Garden City, NY 11530

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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
10th day of November, 1983.

Maucha L. Drunelle

Donna A. Haglund

STATE OF NEW YORK

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10th day of November, 1983.

Martha L. Sennelle

Ernest A. Haglund

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

November 10, 1983

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c/o Louis F. Brush
96 Suffolk Lane
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Martha L. Smuelle

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BARBARA L. WOLSKI :

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for Redetermination of a Deficiency or for :
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In the Matter of the Petition :
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OLGA WOLSKI :

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
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Petitioners, Wladyslaw A. Wolski, Jr. and Barbara L. Wolski, 36 Hicks Lane, Old Westbury, New York 11568, and petitioners, Wladyslaw Wolski, Sr. and

Olga Wolski, 81-12 Pettit Avenue, Elmhurst, New York 11373, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1974 and 1975 (File Nos. 22520, 22517, 22519 and 22518).

A consolidated small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on April 29, 1982 at 1:15 P.M., and continued to conclusion on December 2, 1982 at 9:15 A.M., with all briefs to be submitted by January 31, 1983. Petitioners Wladyslaw A. Wolski, Jr. and Barbara L. Wolski appeared with Louis F. Brush, Esq. Petitioners Wladyslaw Wolski, Sr. and Olga Wolski also appeared by Louis F. Brush, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Anna Colello, Esq., of counsel).

ISSUES

I. Whether adjustments attributing additional income to petitioners, Wladyslaw A. Wolski, Jr. and Wladyslaw Wolski, Sr. were proper.

II. Whether adjustments made to various deductions claimed by petitioners were proper.

FINDINGS OF FACT

1. Wladyslaw A. Wolski, Jr. and his wife, Barbara L. Wolski, timely filed separate New York State income tax resident returns, forms IT-201, for each of the years 1974 and 1975.

2. On March 17, 1978, the Audit Division issued a Statement of Audit Changes to petitioner Wladyslaw A. Wolski, Jr. with respect to the year 1974. Pursuant to a Schedule of Audit Adjustments attached thereto, the following adjustments were made:

Itemized Deductions Disallowed Due to
Lack of Substantiation:

		<u>ADJUSTMENTS</u>
Checking Plus Interest - Claimed	\$ 318.00	
Checking Plus Interest - Allowed	<u>147.00</u>	\$ 171.00
Contributions - Claimed	520.00	
Contributions - Allowed	<u>0.00</u>	520.00
Financial & Tech. Publications-Claimed	365.00	
Financial & Tech. Publications-Allowed	<u>54.00</u>	311.00
Tools and Books - Claimed	530.00	
Tools and Books - Allowed	<u>426.60</u>	103.40
Non Deductible Itemized Deductions:		
Personal Property Tax - Non Ad Valorem		116.00
Sales Tax on Bldg. Material Taken In Addition To Table Amount		167.00
Capital Loss:		
Claimed	1,000.00	
Allowed	<u>500.00</u>	500.00
Married but filing separate status -- limited to \$500.00 per person.		
State Income Tax Refund		
State Modification Reducing Federal Adj. Gross Income		(121.49)
Additional Income Based on Analysis of Cash Availability		7,654.56
Medical Adjustment:		
(3% of \$8,032.00) - Limited to Allowed Medical Exp. of \$178.00		<u>178.00</u>
TOTAL ADJUSTMENTS		\$ 9,599.47

A Statement of Audit Changes was also issued under the same date to said petitioner with respect to the year 1975. Pursuant to a Schedule of Audit Adjustments attached thereto, the following adjustments were made:

Itemized Deductions Disallowed Due to
Lack of Substantiation:

		<u>ADJUSTMENTS</u>
Medical & Dental Exp. - Claimed	\$352.00	
Medical & Dental Exp. - Allowed	<u>150.00</u>	\$ 202.00
Checking Plus Int. - Claimed	345.00	
Checking Plus Int. - Allowed	<u>26.32</u>	318.68
Contributions - Claimed	590.00	
Contributions - Allowed	<u>0.00</u>	590.00
Financial & Tech. Publications-Claimed	415.00	
Financial & Tech. Publications-Allowed	<u>0.00</u>	415.00
Tools & Books - Claimed	680.00	
Tools & Books - Allowed	<u>497.00</u>	183.00
Non Deductible Itemized Deductions:		
Personal Property Tax - Non Ad Valorem		126.00
Sales Tax on Bldg. Material Taken In Addition to Table Amount		173.00
State Income Tax Refund		
State Modification Reducing Federal Adjusted Gross Income		(631.00)
Additional Income Based on Analysis of Cash Availability		<u>465.60</u>
TOTAL ADJUSTMENTS		\$ 1,842.28

Accordingly, a Notice of Deficiency was issued against petitioner Wladyslaw A. Wolski, Jr. on April 14, 1978 asserting additional personal income tax for 1974 and 1975 of \$1,269.02, negligence penalty pursuant to Tax Law section 685(b) of \$63.45 plus interest of \$306.58, for a total due of \$1,639.05.

3. On March 17, 1978, the Audit Division issued a Statement of Audit Changes to petitioner Barbara L. Wolski with respect to the year 1974. Pursuant to a Schedule of Audit Adjustments attached thereto, the following adjustments were made:

Itemized Deductions Disallowed Due to
Lack of Substantiation:

		<u>ADJUSTMENTS</u>
Medical and Dental Expenses - Claimed	\$767.00	
Medical and Dental Expenses - Allowed	<u>64.27</u>	\$ 702.73
Checking Plus - Claimed	316.00	
Checking Plus - Allowed	<u>0.00</u>	316.00
Contributions - Claimed	525.00	
Contributions - Allowed	<u>0.00</u>	525.00
Professional Fee and Publ. - Claimed	312.00	
Professional Fee and Publ. - Allowed	<u>180.00</u>	132.00
Tools and Books - Claimed	335.00	
Tools and Books - Allowed	<u>0.00</u>	335.00
Uniforms - Claimed	660.00	
Uniforms - Allowed	<u>0.00</u>	660.00
Non Deductible Itemized Deductions:		
Personal Property Tax - Non Ad Valorem		94.00
State Income Tax Refund		
State Modification Reducing Federal Adjusted Gross Income		<u>(160.00)</u>
TOTAL ADJUSTMENTS		\$ 2,604.73

A Statement of Audit Changes was also issued under the same date to said petitioner with respect to the year 1975. Pursuant to a Schedule of Audit Adjustments attached thereto, the following adjustments were made:

Itemized Deductions Disallowed Due to
Lack of Substantiation:

		<u>ADJUSTMENTS</u>
Medical and Dental Expenses - Claimed	\$975.00	
Medical and Dental Expenses - Allowed	<u>70.90</u>	\$ 904.10
Checking Plus - Claimed	327.00	
Checking Plus - Allowed	<u>0.00</u>	327.00
Contributions - Claimed	565.00	
Contributions - Allowed	<u>0.00</u>	565.00

Professional Fee and Publ. - Claimed	365.00	
Professional Fee and Publ. - Allowed	<u>0.00</u>	365.00
Tools and Books - Claimed	360.00	
Tools and Books - Allowed	<u>0.00</u>	360.00
Uniforms - Claimed	720.00	
Uniforms - Allowed	<u>0.00</u>	720.00

Non Deductible Itemized Deductions:

Personal Property Tax - Non Ad Valorem	96.00
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State Income Tax Refund

State Modification Reducing Federal Adjusted Gross Income	<u>(149.00)</u>
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TOTAL ADJUSTMENTS	\$ 3,188.10
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Accordingly, a Notice of Deficiency was issued against petitioner Barbara Wolski on April 14, 1978 asserting additional personal income tax for 1974 and 1975 of \$465.40, plus interest of \$97.94, for a total due of \$563.34.

4. Wladyslaw Wolski, Sr. and his wife, Olga Wolski, timely filed separate New York State income tax resident returns, forms IT-201, for each of the years 1974 and 1975.

5. On March 17, 1978, the Audit Division issued a Statement of Audit Changes to petitioner Wladyslaw Wolski, Sr. with respect to the year 1974. Pursuant to a Schedule of Audit Adjustments attached thereto, the following adjustments were made:

Itemized Deductions Disallowed Due to
Lack of Substantiation:

	<u>ADJUSTMENTS</u>
Contributions	\$ 320.00
Political Contributions	50.00
Financial and Investment Publications	150.00

Additional Income Based on Analysis of Cash Availability	6,382.18
Medical Adjustment (4% of \$6,382.18)	<u>255.29</u>
TOTAL ADJUSTMENTS	\$7,157.47

A Statement of Audit Changes was also issued under the same date to said petitioner with respect to the year 1975. Pursuant to a Schedule of Audit Adjustments attached thereto, the following adjustments were made:

Itemized Deductions Disallowed Due to
Lack of Substantiation:

	<u>ADJUSTMENTS</u>
Medical & Dental Expense	\$ 44.82
Contributions	350.00
Political Contributions	100.00
Financial & Investment Publications	160.00

State Tax Refund:

State Modification Reducing Federal Adj. Gross Income	(283.96)
Additional Income Based on Analysis of Cash Availability	6,250.79
Medical Adjustment (4% of \$5,966.83)	<u>238.67</u>
TOTAL ADJUSTMENTS	\$6,860.32

Accordingly, a Notice of Deficiency was issued against petitioner Wladyslaw Wolski, Sr. on April 14, 1978 asserting additional personal income tax for 1974 and 1975 of \$1,055.50, negligence penalty pursuant to Tax Law section 685(b) of \$52.68, plus interest of \$221.50, for a total due of \$1,329.68.

6. On March 17, 1978, the Audit Division issued a Statement of Audit Changes to petitioner Olga Wolski with respect to the year 1974. Pursuant to a Schedule of Audit Adjustments attached thereto, the following adjustments were made:

Itemized Deductions Disallowed Due to
Lack of Substantiation:

	<u>ADJUSTMENTS</u>
Medical and Dental Expenses	\$ 454.24
Contributions	385.00
Political Contributions	50.00
Financial Publications	<u>185.00</u>
TOTAL ADJUSTMENTS	\$ 1,074.24

A Statement of Audit Changes was also issued under the same date to said petitioner with respect to the year 1975. Pursuant to a Schedule of Audit Adjustments attached thereto, the following adjustments were made:

Itemized Deductions Disallowed Due to
Lack of Substantiation:

	<u>ADJUSTMENTS</u>
Medical and Dental Expenses	\$ 679.57
Contributions	385.00
Financial and Advisory Service	185.00
Political Contributions	100.00
State Income Tax Refund:	
State Modification Reducing Federal Adjusted Gross Income	<u>(68.75)</u>
TOTAL ADJUSTMENTS	\$ 1,280.82

Accordingly, a Notice of Deficiency was issued against petitioner Olga Wolski, on April 14, 1978 asserting additional personal income tax for 1974 and 1975 of \$176.79, plus interest of \$36.41, for a total due of \$213.20.

7. During the years at issue herein petitioner Wladyslaw A. Wolski, Jr. was employed by Petro-Chem Development Co., Inc. as a mechanical engineer.

8. Petitioner Wladyslaw A. Wolski, Jr. offered no evidence, other than his testimony, which would establish that he is properly entitled to greater

deductions than those allowed on audit for checking plus interest (1974 and 1975), contributions (1974 and 1975), financial & technical publications (1974), tools and books (1974 and 1975) and medical & dental expenses (1975). Petitioner did establish that he is properly entitled to a deduction for financial and technical publications for 1975 of \$18.00. Said amount was paid to Harvard Business Review relative to his personal investments. Petitioner did not contest the adjustments made to personal property tax (1974 and 1975), sales tax (1974 and 1975) and capital loss (1974).

9. Based on documentation evidencing several previously uncredited sources of funds, the Audit Division withdrew the adjustments made for "additional income based on analysis of cash availability" of \$7,654.56 for 1974 and \$465.60 for 1975.

10. During the years at issue herein petitioner Barbara L. Wolski was employed as a nurse by the New York City Health and Hospitals Corporation.

11. Petitioner Barbara L. Wolski offered no evidence, other than her testimony, which would establish that she is properly entitled to greater deductions for 1974 and 1975 than those allowed on audit for medical and dental expenses, contributions, professional fees and publications, tools and books, and uniforms. Petitioner conceded those adjustments to checking plus interest and personal property tax for both 1974 and 1975.

12. During the years at issue petitioner Wladyslaw Wolski, Sr. was employed by National Distillers and Chemical Corp. Petitioner Olga Wolski was employed by YWCA of the City of New York.

13. No testimony was rendered during the hearing, and no documentary evidence was submitted subsequent thereto with respect to the various adjustments

made to the itemized deductions claimed by either Wladyslaw Wolski, Sr. or Olga Wolski.

14. Based on documentation evidencing previously uncredited sources of funds for 1974 from three savings account withdrawals and the proceeds from a stock sale, the Audit Division withdrew the adjustment of \$6,382.18 for "additional income based on analysis of cash availability" for 1974 on petitioner Wladyslaw Wolski, Sr.

15. Pursuant to the audit workpapers and withdrawal slips submitted by petitioner Wladyslaw Wolski, Sr., the auditor did not give petitioner credit for three 1975 withdrawals from Union Dime Savings Bank, Account Number 293-310-14 as follows: May 19, 1975 - \$3,000.00, June 30, 1975 - \$1,541.00 and October 3, 1975 - \$700.00. The May 19 and October 3 withdrawals were in cash. The June 30 withdrawal was in the form of a check made payable to an individual.

16. Petitioner Wladyslaw Wolski, Sr. contended that the estimated living expenses of \$10,944.82, incorporated into the 1975 cash availability analysis, was overstated. Although petitioner was requested at the time of the audit to submit a schedule of his living expenses, he failed to do so. Subsequent to the hearing held herein he submitted a notarized affidavit wherein he stated with respect to his 1975 living expenses that:

"The personal estimated living expenses are stated extremely high by the auditor. Our clothing expenses are very little as we are an older couple. We spend very little for laundry and dry cleaning. We have no expenses for vacations. Our grocery bills are modest and are 60% of what the auditor contends. Our utilities are \$14.00 per month. Our insurance expense is \$106.00. We spent nothing as far as home furnishings are concerned. Our automobile is a volkswagen and there were no repairs and the amount to maintain the car was less than 10¢ a mile as stated by the auditor. Our telephone bill was \$7.00 - \$10.00 a month. Our entire personal living expenses were no more than half of what the auditor contends."

No documentary evidence was submitted in support thereof.

CONCLUSIONS OF LAW

A. That petitioner Wladyslaw A. Wolski, Jr. failed to sustain his burden of proof, required pursuant to section 689(e) of the Tax Law, to show that he is properly entitled to greater deductions than those allowed on audit for checking plus interest (1974 and 1975), contributions (1974 and 1975), financial & technical publications (1974), tools and books (1974 and 1975) and medical & dental expenses (1975). Accordingly, the adjustments to these deductions are sustained. The Commission is not bound to accept petitioner's testimony (cf. Matter of Donato v. Wyman, 32 A.D.2d 1061).

B. That petitioner Wladyslaw A. Wolski, Jr. is properly entitled to a deduction of \$18.00 for 1975 for financial and technical publications.

C. That the adjustments made with respect to Wladyslaw A. Wolski, Jr. for personal property tax (1974 and 1975), sales tax (1974 and 1975) and capital loss (1974) are hereby sustained.

D. That the adjustments made to petitioner Wladyslaw A. Wolski, Jr.'s returns for "additional income based on analysis of cash availability" of \$7,654.56 for 1974 and \$465.60 for 1975 are cancelled as said adjustments were conceded by the Audit Division.

E. That petitioner Barbara L. Wolski failed to sustain her burden of proof, required pursuant to section 689(e) of the Tax Law, to show that she is properly entitled to greater deductions for 1974 and 1975 than those allowed on audit for medical and dental expenses, contributions, professional fees and publications, tools and books and uniforms. Accordingly, the adjustments to these deductions are sustained.

F. That the adjustments made to petitioner Barbara L. Wolski's returns for checking plus interest and personal property tax for both 1974 and 1975 are sustained as said adjustments were conceded by petitioner.

G. That petitioner Wladyslaw Wolski, Sr. failed to sustain his burden of proof, required pursuant to section 689(e) of the Tax Law, to show that he is properly entitled to greater deductions for 1974 and 1975 than those allowed on audit. Accordingly, the adjustments made to the various itemized deductions claimed are hereby sustained.

H. That the adjustment made to petitioner Wladyslaw Wolski, Sr.'s 1974 return of \$6,382.18 for "additional income based on analysis of cash availability" is cancelled as said adjustment was conceded by the Audit Division.

I. That petitioner Wladyslaw Wolski, Sr. is properly entitled to credit as a source of funds for two savings account withdrawals totaling \$3,700.00 in 1975, thereby reducing the 1975 adjustment of \$6,250.79 for "additional income based on analysis of cash availability" to \$2,550.79.

J. That petitioner Olga Wolski has failed to sustain her burden of proof, required pursuant to section 689(e) of the Tax Law, to show that she is properly entitled to greater deductions for 1974 and 1975 than those allowed on audit. Accordingly, the adjustments made to the various itemized deductions claimed are hereby sustained.

K. That the petition of Wladyslaw A. Wolski, Jr. is granted to the extent provided in Conclusions of Law "B" and "D" supra, and except as so granted, said petition is, in all other respects denied.

L. That the petition of Barbara L. Wolski is denied and the Notice of Deficiency dated April 14, 1978 is sustained together with such additional interest as may be lawfully owing.

M. That the petition of Wladyslaw Wolski, Sr. is granted to the extent provided in Conclusions of Law "H" and "I" supra, and except as so granted, said petition is, in all other respects, denied.

N. That the petition of Olga Wolski is denied and the Notice of Deficiency dated April 14, 1978 is sustained together with such additional interest as may be lawfully owing.

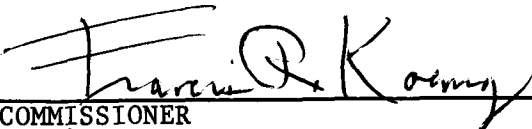
O. That the Audit Division is hereby directed to modify the notices of deficiency issued on April 14, 1978 to petitioners Wladyslaw A. Wolski, Jr. and Wladyslaw Wolski, Sr. to be consistent with the decision rendered herein.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 10 1983


PRESIDENT


COMMISSIONER


COMMISSIONER