

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
George Wunderlich, Jr. :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the :
Year 1974. :

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon George Wunderlich, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George Wunderlich, Jr.
42 Forest Hill Drive
Corning, NY 14830

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
6th day of May, 1983.

David Parchuck

Annice A. Highland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

George Wunderlich, Jr.
42 Forest Hill Drive
Corning, NY 14830

Dear Mr. Wunderlich:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE WUNDERLICH, JR.	:	DECISION
	:	
for redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1974.	:	

Petitioner George Wunderlich, Jr., 42 Forest Hill Drive, Corning, New York 14830, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 16135).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York, on September 24, 1981 at 10:45 A.M. Petitioner appeared by Walter R. Conlin, P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

ISSUE

Whether petitioner provided sufficient evidence to establish deductions for "Medical and Dental Expenses" and "Miscellaneous Deductions."

FINDINGS OF FACT

1. Petitioner, George Wunderlich, Jr., and his wife, Josephine Wunderlich, timely filed a New York State Combined Income Tax Return for the year 1974.
2. On May 24, 1976, the Audit Division issued to the petitioner a Notice of Deficiency in the sum of \$697.10, along with an explanatory Statement of Audit Changes which stated:

Because you failed to substantiate items for review on your 1974 New York State income tax return, those deductions have been disallowed and your tax recomputed accordingly.

<u>Item</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Adjustment</u>
Medical and Dental	\$ 4,086.11	\$ -0-	\$ 4,086.11
Miscellaneous Deductions	850.05	-0-	850.05
Total Adjustments			<u>\$ 4,936.16</u>

3. At the hearing, the Audit Division and petitioner stipulated that one-half of the insurance premium for medical care of \$150.00 and the remaining insurance of \$187.24 plus \$957.94 of medical expenses, prior to the three percent limitation, was an allowable deduction. All other medical expenses were still at issue. Petitioner submitted cancelled checks for medical and dental expenses of \$86.12 and nursing home care of \$5,015.32. Petitioner also submitted:

(a) Letters from Corning Hospital, dated October 14, 1981, Founders Pavilion, dated October 20, 1981, and Hornell Nursing and Health Related Facility, dated October 20, 1981 stating that fees paid were for professional care services and accommodations. These fees were paid for his mother's nursing care. He claimed his mother as a dependent on his tax return.

(b) An agreement between the Corning Hospital Long Term Care Unit, hereinafter called "LTCU", and petitioner. This agreement stated that the LTCU would provide a room with board, linens, bedding, general nursing, and routine personal care incidental to the well being and safety of the resident, and the administration of such medication as may be prescribed by the attending physician.

(c) A worksheet for the expenses incurred in using an automobile for transportation for medical purposes, using a standard mileage rate of 7¢ a mile. Petitioner claimed 2,754 miles to visit his mother and 302 miles for medical trips. Attached to the worksheet was a statement from a doctor which

stated, "Mr. George Wunderlich is the son and only relative of Mrs. Irene Wunderlich. It is essential to her well-being that her son drive to Hornell to visit her".

(d) Form 2038, Information to Support Exemption Claimed for Dependent on Federal Income Tax Return ¹ which reported the following information:

Income received by petitioner's mother	
Social Security	\$2,736.00
Veterans Pension	<u>1,018.00</u>
Total Income Received	\$3,754.00

Expenses for dependent only	
Clothing	\$ 430.00
TV Services & Maintenance	107.04
Medical Miles	213.92
Special Bed	331.47
Toilet Articles	70.00
Nursing Home Care	<u>11,424.09</u>
Total Cost of Support	\$12,576.52

The Department of Social Services provided \$5,327.81 in support for petitioner's mother's nursing home care which left a balance of \$7,248.71 contributed for her support. The \$3,754.00 received by the petitioner's mother was not reported as an amount contributed by dependent for her support. The petitioner contended these monies were contributed by his mother for the college tuition of her grandson George Wunderlich III.

(e) A letter from the Department of Social Service dated February 27, 1980 stating that they provided support for the petitioner's mother.

4. At the hearing, the Audit Division and petitioner stipulated that business publications of \$46.55 and business dues of \$64.20 are allowable deductions under miscellaneous deductions.

5. Petitioner's wife was employed by the Corning City School District to teach English and Social Studies at Painted Post West High School for the

¹ This form was provided by the petitioner to substantiate his mother as a medical dependent.

school term 1973-1974. Petitioner contended that his wife completed two graduate courses at Elmira College during the school term 1974-1975 in order to maintain or improve her teaching skills. Petitioner further presented cancelled checks and grade reports regarding said courses.

6. Petitioner George Wunderlich, Jr. was credit manager for the international division of Corning Glass Works during 1974. This company reimbursed petitioner for all travel expenses and most of his entertainment expenses. Petitioner contended that he was not reimbursed for country club dues. He contended that he used the club 75 percent of the time for business. Petitioner presented a few Corning Glass Works expense reports and some Corning Country Club guest checks. These documents were generally lacking in required detail such as the amount of each separate expenditure, reason for the entertainment, and business benefit derived. Nor was there a way to determine the percentage of business use for the country club. The petitioner did not present a statement from his employer that he was required to incur this expense.

CONCLUSIONS OF LAW

A. That the medical expense deduction of \$5,015.32 claimed for payments for the rendering of nursing home care to petitioner's mother, Irene Wunderlich, during 1974 is denied since she did not qualify as a "medical dependent" of petitioner. It appears the funds for the maintenance of the alleged dependent were diverted to another purpose, with the strong likelihood that the labelling of monies occurred in order to achieve a specific tax result. Though a claimed dependent is not required to contribute all monies received for her support, there cannot be a manipulation of figures which would primarily benefit the petitioner.

The cost of medical transportation must be incurred by the person receiving the medical treatment. Therefore, only \$21.14 is deductible (302 miles x \$.07 per mile).

That petitioner is properly entitled to a deduction for medical expenses in the amount of one half of the insurance premium for medical care of \$150.00 and \$1,166.32 of medical expenses² prior to limitation. That petitioner has failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, in establishing that he was entitled to deductions greater than those granted.

B. That teachers frequently incur expenditures in attending college and university courses during their time of practicing their vocation. Where a teacher attends those courses merely because of a personal desire to attain more proficiency or advanced academic standing, it has been generally held that expenses incurred in attending such courses are considered personal and hence not deductible as an ordinary and necessary business expense. If, however, the educational expenditures were incurred in order to maintain or improve skills and/or to increase proficiency or advance in academic standings which is required as a prerequisite to the retention of teaching status as a member of a teaching staff of a school, such expenses have been allowed as ordinary and necessary expenses. That petitioner has not sustained the burden of proof pursuant to section 689(e) of the Tax Law in establishing that his wife was a full-time member of a teaching staff of a school that required advance academic

² Although under the facts of this case the petitioner would not be entitled to a dependency exemption claimed for his mother, Irene Wunderlich, nor some of the medical expenses of his mother stipulated to by Audit Division which would have resulted in a greater deficiency, such greater deficiency was not asserted at or before the hearing. A greater deficiency may not now be asserted pursuant to section 689(d)(1) of the Tax Law.

standing for retention of employment during the period the expenditures were being incurred.

C. That petitioner has failed to comply with the recordkeeping requirements pursuant to section 274(d) of the Internal Revenue Code, and further, petitioner has failed to sustain his burden of proof pursuant to section 689(e) of the Tax Law with respect to section 274 of the Internal Revenue Code and Regulation §1.274-2 as they would apply to an entertainment facility.


D. That the petitioner is not entitled to a "Miscellaneous Deduction" greater than those granted in Finding of Fact "4".

E. That the Audit Division is hereby directed to modify the Notice of Deficiency dated May 24, 1976 to be consistent with the decision rendered herein. That the petition of George Wunderlich, Jr. is granted to the extent provided in Conclusions of Law "A" and "D" supra and that said petition is, in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER