

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Rafael V. M. Cestero :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income Tax :
under Article 22 of the Tax Law for the Year 1978. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 5th day of October, 1984, he served the within notice of Decision by certified mail upon Rafael V. M. Cestero, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rafael V. M. Cestero
374 Ashbourne Rd.
Rochester, NY 14618

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
5th day of October, 1984.

David Parchuck

James J. O'Connell
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 5, 1984

Rafael V. M. Cestero
374 Ashbourne Rd.
Rochester, NY 14618

Dear Mr. Cestero:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Peter T. Hraber
Forth, Gilman & Hraber
908 Sibley Tower Bldg.
Rochester, NY 14604
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|--|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| RAFAEL V. M. CESTERO | : | DECISION |
| for Redetermination of a Deficiency or for | : | |
| Refund of Personal Income Tax under Article 22 | : | |
| of the Tax Law for the Year 1978. | : | |

Petitioner, Rafael V. M. Cestero, 374 Ashbourne Road, Rochester, New York 14618, 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 1978 (File No. 36689).

A small claims hearing was held before Anthony Ciarlone, Jr., Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Room 1300, Rochester, New York, on April 23, 1984 at 2:45 P.M., with all briefs to be submitted by June 27, 1984. Petitioner, Rafael V. M. Cestero, appeared by Peter T. Hraber, C.P.A., of the accounting firm of Forth, Gilman & Hraber. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly disallowed a portion of petitioner's claimed alimony expense deduction.

II. Whether the Audit Division properly disallowed petitioner's depreciation deduction.

FINDINGS OF FACT

1. Petitioner herein, Rafael V. M. Cestero, timely filed a 1978 New York State Income Tax Resident Return whereon he claimed, inter alia, a deduction of

\$19,306.35 for alimony payments made to his former spouse and a deduction of \$473.32 for depreciation of an automobile used partly for business purposes.

2. The Audit Division, on September 10, 1981, issued a Notice of Deficiency to petitioner for 1978, asserting that additional tax of \$257.62 was due, together with interest of \$53.17, for a total allegedly due of \$310.79. The Notice of Deficiency was premised on the Audit Division's disallowance of \$1,673.54 of petitioner's claimed alimony expense deduction of \$19,306.35. Said amount was disallowed as unsubstantiated. The Audit Division also disallowed petitioner's claimed deduction of \$473.32 for depreciation of an automobile on the ground that said automobile had been fully depreciated in prior years.

3. Petitioner submitted acceptable documentary evidence, in the form of cancelled checks, which fully substantiates his claimed alimony expense deduction of \$19,306.35. Petitioner also submitted a depreciation schedule which reveals that his automobile was purchased in 1974 and that the depreciation on said automobile was computed using a 7 year useful life. The automobile in question was not fully depreciated until the 1981 tax year.

CONCLUSIONS OF LAW


A. That petitioner has sustained his burden of proof pursuant to section 689(e) of the Tax Law to substantiate his claimed alimony expense deduction of \$19,306.35. Petitioner has also met his burden of proof to show that he is entitled to a depreciation deduction of \$473.32 since the automobile in question had not been fully depreciated in years prior to the tax year in dispute.

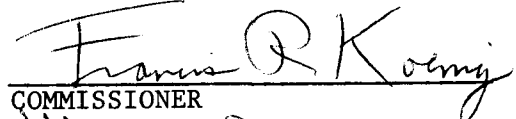
B. That the petition of Rafael V. M. Cestero is granted and the Notice of Deficiency dated September 10, 1981 is cancelled in its entirety.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 05 1984


PRESIDENT


COMMISSIONER


COMMISSIONER