

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Michel J. & Nancy M. Denber :
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. :

AFFIDAVIT OF MAILING

State of New York }
County of Albany } ss.:

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 6th day of July, 1984, he served the within notice of Decision by certified mail upon Michel J. & Nancy M. Denber, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michel J. & Nancy M. Denber
29 Currewood Circle
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
6th day of July, 1984.

David Parhuck

James P. Hammond
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 6, 1984

Michel J. & Nancy M. Denber
29 Currewood Circle
Rochester, NY 14618

Dear Mr. & Mrs. Denber:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|--|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| MICHEL J. AND NANCY M. DENBER | : | DECISION |
| for Redetermination of a Deficiency or for | : | |
| Refund of Personal Income Tax under Article 22 | : | |
| of the Tax Law for the Year 1978. | : | |

Petitioners, Michel J. and Nancy M. Denber, 29 Currewood Circle, 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. 34735).

A small claims hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on March 12, 1984 at 1:15 P.M. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioners properly reported their medical expense and casualty loss itemized deductions on their New York State Income Tax Resident Return for 1978.

FINDINGS OF FACT

1. On June 8, 1981, the Audit Division issued a Notice of Deficiency against petitioners, Michel J. and Nancy M. Denber, in the amount of \$131.39, plus interest of \$23.78, for a total amount due of \$155.17 for the tax year 1978. A Statement of Audit Changes issued April 30, 1981 explained that petitioners' tax liability had been recomputed because the itemized deduction amounts on petitioners' New York return did not agree with the amounts entered

on their Federal return. The statement also explained that "[t]he full amount of State and local income taxes must be subtracted from Federal itemized deductions".

2. Prior to the hearing, the Audit Division conceded that it had incorrectly reduced petitioners' Federal itemized deductions by the amount of \$936.00, representing state and local income taxes, as required by section 615(c)(1) of the Tax Law, inasmuch as petitioners' state and local income tax deduction was only \$512.44. The adjustment increases petitioners' allowable New York itemized deductions with a resulting decrease in personal income tax allegedly due to \$93.24.

3. On their 1978 Federal return, petitioners reported itemized medical and dental expense deductions of \$150.00 after deducting three percent of their adjusted gross income. Said amount represented one-half of insurance premiums paid for medical care. On their New York return for 1978, petitioners claimed itemized medical and dental expense deductions of \$1,140.97. The latter figure represented petitioners' total medical and dental expenses prior to reduction by three percent of adjusted gross income as required by section 213 of the Internal Revenue Code in effect during the year in issue.

4. Petitioners reported zero casualty and theft losses on their Federal return for 1978 after reducing their loss by \$100.00 as required by section 165(c)(3) of the Internal Revenue Code in effect during the year in issue. On their New York return for 1978, petitioners claimed a casualty or theft loss of \$45.00 representing their loss prior to the \$100.00 reduction.

5. The Audit Division reduced both the medical expense deduction and the casualty and theft loss deduction to the amounts claimed on petitioners' Federal return. Petitioner Michel J. Denber maintained that he arrived at the

New York return figures by following the instructions supplied with the 1978 New York return. In describing the method of claiming New York itemized deductions, the instructions stated:

"On lines 1 through 7 of Schedule B, enter the total amount of each class of deduction exactly as reported on your Federal itemized Deduction Schedule, before any subtraction was made to Federal itemized deductions."

Petitioners interpreted the phrase "before any subtraction was made to Federal itemized deductions" to mean that medical deductions and casualty deductions were to be reported on the New York return in the amounts as they existed prior to the three percent reduction required for medical deductions and the \$100.00 reduction required for casualty deductions. The Audit Division argues that the "subtraction" referred to in the instructions was to the subtraction of the "zero bracket amount" from total itemized deductions required by section 63 of the Internal Revenue Code in effect during the period in issue.

6. Petitioners further argue that for 1980, the instructions were changed to state:

"Enter on the appropriate lines the total amount of each group of itemized deductions (medical and dental expenses, taxes, etc.) exactly as reported on your federal Schedule A, Form 1040."

Petitioners maintain that, because the "subtraction" clause was removed from the 1980 instructions, medical deductions and casualty deductions were required to be computed according to the Audit Division's method only for 1980 and thereafter.

CONCLUSIONS OF LAW

A. That section 615(a) of the Tax Law provides, in pertinent part, that:

"The New York itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year..." (with certain modifications not at issue herein).

B. That the aforesaid statute clearly states that the New York itemized deduction is the total amount of Federal deductions. The total deductions on petitioners' 1978 Federal return amounted to \$4,974.38 prior to subtracting the zero bracket amount. Therefore, the total New York itemized deductions on petitioners' 1978 New York return should have been \$4,974.38, less the modification for state and local income taxes of \$512.44. Such amount excludes the casualty and theft loss and all medical deductions other than the \$150.00 allowable for insurance premiums. The instructions issued for 1978 also clearly stated that the total amount of each class of deduction was to be entered on the New York return exactly as reported on the Federal return. It is clear from the statute that the subtraction referred to in the instructions was the subtraction of the "zero bracket amount" from total Federal itemized deductions.

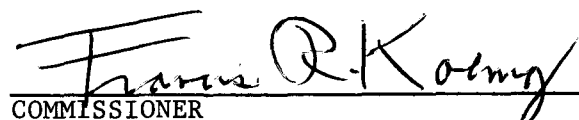
C. That the petition of Michel J. and Nancy M. Denber is granted to the extent indicated in Finding of Fact "2"; that the Audit Division is directed to modify the Notice of Deficiency issued June 8, 1981 accordingly; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 06 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

REQUEST FOR BETTER ADDRESS

| | | |
|--|--|--------------------------------|
| Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227 | Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227 | Date of Request 7/31/84 |
|--|--|--------------------------------|

Please find most recent address of taxpayer described below; return to person named above.

| | |
|---|--|
| Social Security Number | Date of Petition SC - Dec. - 7/6/84 |
| Name Michael J. & Nancy M. Denker | |
| Address 29 Curwood Circle Rochester, N.Y. 14618 | |

Results of search by Files

| | |
|---|-----------|
| <input type="checkbox"/> New address: | |
| <input type="checkbox"/> Same as above, no better address | |
| <input checked="" type="checkbox"/> Other: | Unclaimed |

| | | |
|-------------------|---------|---------------------------|
| Searched by DD | Section | Date of Search 7/31/84 |
|-------------------|---------|---------------------------|

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

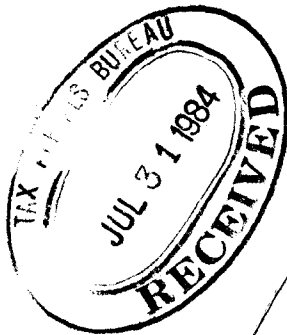
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

[Handwritten signature]

REASON FOR RETURN
Unclassified ☒ *[initials]*
Addresses unknown ☐
Inauthentic Address ☐
No such street ☐
No such office in state ☐
Do not return in this envelope ☐



Michel J. & Nancy M. Denber
29 Curewood Circle
Rochester, NY 14618



[Handwritten notes and stamps]
7/19
7/24
7/24

CERTIFIED

P 440977 216

MAIL

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

July 6, 1984

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29 Currewood Circle
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Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

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STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

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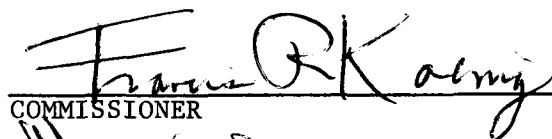
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DATED: Albany, New York

JUL 06 1984

STATE TAX COMMISSION


PRESIDENT


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COMMISSIONER