

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Istvan F. & Nora V. Kelemen :  
for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax under Article 22 of the Tax :  
Law and Chapter 46, Title U of the Administrative :  
Code of the City of New York for the Year 1977. :  
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AFFIDAVIT OF MAILING

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 29th day of February, 1984, he served the within notice of Decision by certified mail upon Istvan F. & Nora V. Kelemen, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Istvan F. & Nora V. Kelemen  
3950 Hahn Ave.  
Bethpage, NY 11714

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  
29th day of February, 1984.

David Parchuck

William C. Hagge  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 29, 1984

Istvan F. & Nora V. Kelemen  
3950 Hahn Ave.  
Bethpage, NY 11714

Dear Mr. & Mrs. Kelemen:

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 & 1312 of the Tax Law and Chapter 46, Title U of the Administrative Code of the City of New York, 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

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In the Matter of the Petition  
of  
ISTVAN F. KELEMEN AND NORA V. KELEMEN  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law and Chapter 46, Title U of the  
Administrative Code of the City of New York for  
the Year 1977.

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DECISION

Petitioners, Istvan F. Kelemen and Nora V. Kelemen, 3950 Hahn Avenue, Bethpage, New York 11714, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 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 year 1977 (File No. 33738).

A 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 Wednesday, May 11, 1983 at 10:45 A.M. Petitioner Istvan F. Kelemen appeared pro se and for his wife. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

#### ISSUES

I. Whether petitioners properly increased New York itemized deductions from \$6,566.12, the amount as claimed on their original return, to \$10,917.15, the total claimed on an amended return.

II. Whether petitioner Istvan F. Kelemen can allocate wage income to sources within and without New York City.

FINDINGS OF FACT

1. Petitioners herein, Istvan F. Kelemen and Nora V. Kelemen<sup>1</sup>, timely filed a New York State Income Tax Resident Return for 1977 wherein they claimed New York itemized deductions of \$6,566.12. Attached to the 1977 New York State return was a City of New York Nonresident Earnings Tax Return for 1977 wherein petitioner reported gross wages of \$23,424.72 received from Trans World Airlines, Inc. (hereinafter "Trans World"). The entire wage income received from Trans World was reported as being taxable to New York City with no allocation of said income to sources within and without the City.

2. On April 1, 1981, the Audit Division issued a Notice of Deficiency to petitioner for the year 1977 asserting that an additional \$474.07 of New York State personal income tax was due, together with interest of \$118.31, for an alleged total due of \$592.38. The aforementioned Notice of Deficiency was premised on an explanatory Statement of Audit Changes dated November 18, 1980, wherein two adjustments were proposed which increased New York State taxable income from \$12,855.43 to \$17,737.00. Petitioner does not contest the propriety of the two adjustments proposed in the Statement of Audit Changes, however, he does assert that the additional tax due generated from said adjustments is offset in full by a refund due him pursuant to several amended returns filed for the year 1977.

3. Petitioner submitted to the Department of Taxation and Finance three amended returns for the year 1977. The first amended return, filed on or about November 25, 1980, claimed total itemized deductions of \$6,832.00. The second amended return, filed on or about March 9, 1981, claimed total itemized deductions

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<sup>1</sup> Nora V. Kelemen is involved in this proceeding due solely to the filing of a joint income tax return with her husband. Accordingly, the use of the term petitioner hereafter shall refer solely to Istvan F. Kelemen.

of \$7,387.91. The third and final amended return submitted into evidence was filed on or about October 1, 1982 and claimed total itemized deductions of \$10,917.15. Copies of two amended Federal income tax returns for 1977 were submitted by petitioner wherein he first claimed total Federal itemized deductions of \$7,387.91, said amount subsequently being amended to \$11,025.00. There is no explanation in the record as to why the final amended Federal income tax return claimed itemized deductions of \$11,025.00 while the final amended New York return reported itemized deductions of \$10,917.15. None of petitioner's New York State returns reported modifications increasing or decreasing itemized deductions pursuant to section 615 of the Tax Law.

4. No documentary evidence was adduced at the hearing to support that the Internal Revenue Service accepted either of the two amended Federal income tax returns filed by petitioner for the year 1977.

5. After the close of the hearing held herein, petitioner submitted for consideration photocopies of various bills, receipts and invoices in support of his claim for increased itemized deductions. A considerable portion of said documentation was either not legible, did not identify the tax year in question, did not have petitioner's name on the document or did not adequately identify the item or items purchased.

6. Each of the New York amended returns referred to in Finding of Fact "3", supra, claimed that wage income of \$23,424.72 received from Trans World should be apportioned to sources within and without the City of New York based on a percentage determined by placing days worked within the City over total working days. The record contains no evidence to support that petitioner worked outside of the City of New York for Trans World.

CONCLUSIONS OF LAW

A. That pursuant to section 689(e) of the Tax Law, petitioner bears the burden of proof except in three specifically enumerated instances, none of which are applicable in the instant matter. That petitioner has failed to sustain his burden of proof to show that he is entitled to itemized deductions in an amount greater than that allowed by the Audit Division. That the documentation submitted by petitioner (Finding of Fact "5", supra) was of little or no value in substantiating the amount of itemized deductions to which petitioner is entitled. Additionally, those itemized deductions for which acceptable documentation was submitted did not total to an amount greater than that allowed by the Audit Division.


B. That section U46-39.0(e) of Chapter 46, Title U of the Administrative Code of the City of New York also places the burden of proof upon petitioner with respect to the New York City Earnings Tax on Nonresidents. That petitioner has failed to meet his burden of proof to show that he is entitled to allocate the wage income received from Trans World to sources within and without New York City.

C. That the petition of Istvan F. Kelemen and Nora V. Kelemen for redetermination of a deficiency and for refund is denied in full and that the Notice of Deficiency dated April 1, 1981 is sustained, together with such additional interest as may be lawfully due and owing.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 29 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER