

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| Richard & Aracelly Ramirez | : | |
| for Redetermination of a Deficiency or Revision | : | AFFIDAVIT OF MAILING |
| of a Determination or Refund of NYS & NYC Income | : | |
| Tax under Article 22 & 30 of the Tax Law for the | : | |
| Year 1976. | : | |

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 1st day of June, 1984, he served the within notice of Decision by certified mail upon Richard & Aracelly Ramirez, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

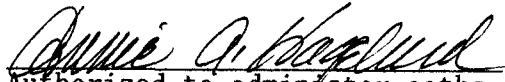
Richard & Aracelly Ramirez
838 Riverside Dr., #4C
New York, NY 10032

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
1st day of June, 1984.




Annie A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

June 1, 1984

Richard & Aracelly Ramirez
838 Riverside Dr., #4C
New York, NY 10032

Dear Mr. & Mrs. Ramirez:

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, 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 | : | |
| RICHARD RAMIREZ AND ARACELLY RAMIREZ | : | DECISION |
| for Redetermination of a Deficiency or for | : | |
| Refund of Personal Income Taxes under Articles | : | |
| 22 and 30 of the Tax Law for the Year 1976. | : | |

Petitioners, Richard Ramirez and Aracelly Ramirez, 838 Riverside Drive, Apt. 4C, New York, New York 10032, 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 personal income tax under Article 30 of the Tax Law for the year 1976 (File No. 31722).

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 October 31, 1983 at 1:15 P.M., with all briefs to be submitted by November 14, 1983. Petitioner Richard Ramirez appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner Richard Ramirez is properly entitled to an educational expense deduction for expenses incurred during three trips to the Dominican Republic.

FINDINGS OF FACT

1. Richard Ramirez (hereinafter petitioner) and his wife Aracelly Ramirez, timely filed a joint New York State Income Tax Resident Return (with New York City Personal Income Tax) for the year 1976 whereon he claimed an adjustment to income of \$5,050.00.

2. On May 24, 1978, the Audit Division issued a Statement of Audit Changes to petitioners wherein, as a result of audit, \$4,450.00 was disallowed from the \$5,050.00 adjustment to income claimed. Accordingly, a Notice of Deficiency was issued against petitioners on April 11, 1980 asserting additional New York State personal income tax of \$391.54, additional New York City personal income tax of \$124.75 plus interest of \$129.73, for a total due of \$646.02.

3. The disallowed portion of petitioner's claimed adjustment to income was comprised of expenses incurred during three trips made to the Dominican Republic during 1976. The expenses were claimed as educational expenses on the basis that the trips were made for the purpose of improving petitioner's skills as a junior high school Spanish teacher. Said expenses were broken down by petitioner as follows:

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| <u>Easter Recess</u> | |
| Air fare, taxi and tourist card | \$ 269.00 |
| Food & lodging: 11 days @ \$30.00 per day | 330.00 |
| Miscellaneous: including land transportation, film, slides, processing and maps | 100.00 |
| Total | <u>\$ 699.00</u> |

| | |
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| <u>Summer Recess</u> | |
| Air fare, taxi & visa | \$ 374.00 |
| Food & lodging: 69 days @ \$30.00 per day | 2,070.00 |
| Miscellaneous: side trips, film, slides and maps | 445.00 |
| Total | <u>\$2,889.00</u> |

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|--|------------------|
| <u>Christmas Recess</u> | |
| Air fare, taxi & tourist card | \$ 322.00 |
| Food & lodging: 14 days @ \$30.00 per day | 420.00 |
| Miscellaneous: side trips, film, slides and maps | 120.00 |
| Total | <u>\$ 862.00</u> |

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|--------------------------------|-------------------|
| Total expenses for three trips | <u>\$4,450.00</u> |
|--------------------------------|-------------------|

4. The Audit Division accepted petitioner's schedule of expenses as being correct. However, the expenses were disallowed since the Audit Division regarded the three trips and the expenses incurred thereon as being personal in nature.

5. During the year 1976 petitioner was employed as a Spanish language teacher at Adam Clayton Powell, Jr. Junior High School at 509 West 129th Street, New York City. He had held this position from the time he obtained his license in 1964.

6. Petitioner's education in the Spanish language, prior to his licensing, consisted of four courses, the first of which was elementary, taken at Manhattan College for a total of twenty four credits. The degree he earned was in education. The languages he studied in high school were French and Latin. Although his name is Hispanic in origin, petitioner's parents did not speak Spanish at home.

7. Subsequent to his graduation, petitioner entered a post graduate program which was given for the purpose of upgrading language teachers. He also took several courses in Spanish literature at City College. Unfortunately, these courses proved valueless in improving his verbal communication.

8. Prior to, and during 1976 the number of teachers was being reduced as the result of the New York City budget crisis. The lost staff in petitioner's school included teachers with more than ten years of experience, two of which were in the Foreign Language Department. With this in mind, in January, 1976 petitioner's principal suggested that petitioner improve his Spanish language skills so that he may be placed in the Bilingual Program, which appeared to be relatively safe from cutbacks. It was further suggested by the principal that "Perhaps you can utilize this year's recesses to improve upon your Spanish skills and further acquaint yourself with the Spanish culture."

9. Petitioner's class in 1976 had a register of 33 students, 27 of which were Dominicans. As the result of the influx at that time of non-English

speaking students from the Dominican Republic, the school was required to seek personnel who were well acquainted with the Dominican culture and its vernacular.

10. As a result of petitioner's trips to the Dominican Republic, his program was split in September, 1976 between teaching in the school's Bilingual Program and his regular duties in the Foreign Language Department. His assignment as a bilingual teacher required a highly proficient oral command of the Spanish language and an enriched cultural knowledge of the Dominican Republic.

11. In a letter dated October 28, 1983 from Community School District Five, it was stated that:

"In 1976, it was necessary for Mr. Richard Ramirez to improve his Spanish language skills in order to be integrated into our bilingual staff. Of particular importance to us was the development of an awareness of the difficulties which were specific to the student population, predominately Dominican, whom Mr. Ramirez would service. With this in mind Mr. Ramirez traveled to the Dominican Republic to acquaint himself with the Dominican way of life, whose understanding was essential to the education of these students.

The immersion of Mr. Ramirez into Dominican society made him familiar with their customs, beliefs, attitudes, behavior and regional linguistic character. This was later evident to me when I observed Mr. Ramirez's classroom instruction which revealed a dramatic improvement in his ability to communicate to his students. In addition to Mr. Ramirez's marked professional improvement acquired during his trips to the Dominican Republic, he provided our office with instructional material which was integrated into the bilingual curriculum."

12. In a guide distributed to teachers by the Board of Education entitled "Minimum Teaching Essentials, Grades K-9" (kindergarten to 9th grade), it is stated, with respect to foreign languages, that:

"Concurrent with language study there is also the attempt to understand the culture of the people whose language is studied, from the point-of-view of both cultural achievements and everyday life, customs and values.

Basic to effective foreign language teaching is the recognition of individual differences, specifically differences in learning rate, learning styles, motivations, goals, interest and

needs. Modifications in curricular content, activities and approaches are necessary to accomodate these differences."

13. Petitioner had no relatives living in the Dominican Republic. His wife did not accompany him on the three trips at issue.

14. Petitioner spent many of the days during his trips visiting places that had an important part in the history or art of the Dominican Republic. Many days were also spent visiting out of the way places familiar to his students. While there, he mingled extensively with the Dominican people and spoke Spanish exclusively. During his summer trip he spent several days observing and teaching at Hilda Basden, a secondary school.

CONCLUSIONS OF LAW

A. That Treasury Regulation § 1.162-5(a) provides in pertinent part that:

"Expenditures made by an individual for education...which are not expenditures of a type described in paragraph (b)(2) or (3) of this section are deductible as ordinary and necessary business expenses...if the education -

(1) Maintains or improves skills required by the individual in his employment or other trade or business."

B. That Treasury Regulation § 1.162-5(d) provides in pertinent part that:

"Travel as a form of education. Expenditures for travel as a form of education are deductible only to the extent such expenditures are attributable to a period of travel that is directly related to the duties of the individual in his employment or other trade or business. For this purpose, a period of travel shall be considered directly related to the duties of an individual in his employment or other trade or business only if the major portion of the activities during such period is of a nature which directly maintains or improves skills required by the individual in such employment or other trade or business."

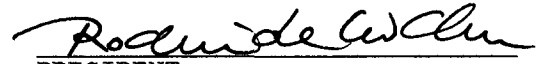
C. That petitioners travel expenses incurred on his trips to the Dominican Republic are properly deductible since such travel was directly related to his duties and improved his skills as a Spanish teacher. (Matter of Gladys M. Smith v. Commissioner, 26 TCM 1281, Dec. 28, 695 (M), TC Memo. 1967-246).

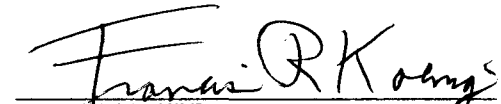
D. That the petition of Richard Ramirez and Aracelly Ramirez is granted and the Notice of Deficiency dated April 11, 1980 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 01 1984


PRESIDENT


COMMISSIONER


COMMISSIONER