

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Elio J. Ippolito :
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 Years :
1979 & 1980. :
_____ :

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 21st day of August, 1985, he served the within notice of Decision by certified mail upon Elio J. Ippolito, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Elio J. Ippolito
4 Kingsland Rd.
N. Tarrytown, NY 10591

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
21st day of August, 1985.

David Parchuck

James A. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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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 21st day of August, 1985, he served the within notice of Decision by certified mail upon Donald F. Van Cook, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald F. Van Cook
1770 Deer Park Ave.
Deer Park, NY 11729

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
21st day of August, 1985.

David Parchuck

James A. Hegsted
Authorized to administer oaths
pursuant to Tax Law section 174

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

August 21, 1985

Elio J. Ippolito
4 Kingsland Rd.
N. Tarrytown, NY 10591

Dear Mr. Ippolito:

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
Donald F. Van Cook
1770 Deer Park Ave.
Deer Park, NY 11729
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ELIO J. IPPOLITO
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1979 and 1980.

DECISION

Petitioner, Elio J. Ippolito, 4 Kingsland Road, North Tarrytown, New York 10591, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1979 and 1980 (File No. 42060).

Petitioner waived a formal hearing and has submitted his case for decision by the State Tax Commission based on the entire file, with all briefs to be submitted by March 18, 1985. After due consideration, the Commission renders the following decision.

ISSUE

Whether petitioner was entitled to deductions for certain contributions to Scarborough School, Inc.

FINDINGS OF FACT

1. On January 12, 1983, the Audit Division issued to petitioner, Elio J. Ippolito, a Notice of Deficiency asserting additional tax due for the years 1979 and 1980 in the amount of \$7,246.50, plus interest. This asserted deficiency is based on two adjustments made to petitioner's income, as follows:

a) a modification pursuant to Tax Law section 612(b)(9) [payments by a professional service corporation on behalf of a shareholder/employee for the purchase of life, accident, health or other insurance], increasing petitioner's income by \$2,399.16 for 1979 and \$2,001.44 for 1980;

b) the disallowance of deductions totalling \$46,823.90 for 1979 and \$9,637.47 for 1980 claimed as charitable contributions made to Scarborough School, Inc.

2. Petitioner concedes and does not contest the modification specified above at Finding of Fact "1-a", thus leaving only the disallowed deductions to Scarborough School, Inc. at issue. Furthermore, the dollar amounts of such disallowed deductions are not at issue, but rather the only issue is whether the Scarborough School, Inc. was, during the years in question, an exempt organization per Internal Revenue Code ("I.R.C.") section 170(c).

3. Petitioner, Elio J. Ippolito, is a physician and is the sole shareholder of Elio J. Ippolito, M.D., P.C.

4. Scarborough School, Inc. ("the School") was granted exempt organization status as an educational institution by the Internal Revenue Service on January 29, 1943, and such status was re-confirmed upon updating of information on October 11, 1954. The School was also granted sales tax exempt status by New York State on or about October 25, 1965 (Exempt Organization No. 120703), which status was later rescinded on or about August 25, 1981 for failure to advise the Audit Division of a change of address. There is no evidence that the School requested reinstatement of its sales tax exempt status.

5. During the years in question, the School was experiencing financial difficulties. The School did not open for classes in September of 1978 or thereafter, although a headmaster was employed to investigate all means whereby the School could be kept in operation. These efforts were not successful and, on or about April 30, 1981, final decision was made to discontinue efforts to operate the School and to dissolve the corporation (Scarborough School, Inc.)

6. Petitioner served as president of the School, although the record does not specify the dates or length of his tenure in such position.

7. Petitioner made contributions to the School during the years in issue in the form of payments to its suppliers and employees and payments of loans incurred on behalf of the School. Petitioner also made contributions to the School in 1978.

8. An Internal Revenue Service Report of Individual Income Tax Examination Changes for 1978, dated January 20, 1981, reflects disallowance of \$16,765.67 out of \$23,436.24 in total contributions claimed by petitioner during 1978 upon the basis that such disallowed amount "...was not made to a qualified organization...".

9. A subsequent Internal Revenue Service Report of Individual Income Tax Examination Changes for 1978, dated March 9, 1983 reflects adjustment to the foregoing amounts of contributions disallowed such that \$22,674.19 out of the \$23,436.24 originally claimed were allowable as contributions. A breakdown of the amounts allowed, with explanations, is as follows:

"- verified by assorted checks	\$ 670.57
- cash allowed	78.00
- verified by check paid to Scarborough School <u>prior to</u> <u>June, 1978</u>	2,000.00
- verified as paid on behalf of School	<u>19,925.62</u>
Total	<u>\$22,674.19"</u>

10. By affidavit, petitioner asserts that the deductions at issue are identical to those claimed on his Federal income tax returns for 1979 and 1980, and that petitioner has never received any notice that the School's exempt status was withdrawn or that the School no longer qualified as an exempt organization. Petitioner was not audited by the Internal Revenue Service for either 1979 or 1980.

11. Internal Revenue Service Publication 78, "Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1954", as revised to October 31, 1979 and to October 31, 1980, respectively, does not include the School on its list of exempt organizations. The School was,

however, listed in such publication as revised to October 31, 1978 and had been listed for prior years in such publication.

CONCLUSIONS OF LAW

A. That Tax Law section 689(e) provides, save for three specified instances none of which is present in this matter, that the burden of proof in any case before the Tax Commission under Article 22 of the Tax Law shall be upon the petitioner. Hence, it is petitioner's burden to prove entitlement to the claimed deductions at issue by establishing that such deductions were based on contributions or gifts to or for the use of an entity or organization meeting the criteria specified by I.R.C. section 170(c).

B. That petitioner has not proven that Scarborough School, Inc. was an exempt organization during 1979 and 1980, and thus has not proven entitlement to deductions for the contributions made to such entity during 1979 and 1980. The absence of the School's name from the Internal Revenue Service cumulative list of section 170(c) organizations during the years in question warrants an inference that the School, for some reason, no longer qualified or met the required criteria for exemption. Petitioner, who appears to have been closely involved in the School's affairs, in turn, presented no evidence serving to controvert such inference or to prove that contributions to the School were properly deductible.

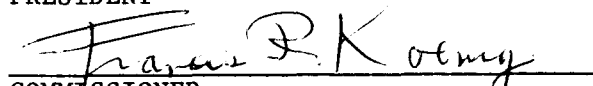
C. That the petition of Elio J. Ippolito is hereby denied and the Notice of Deficiency dated January 12, 1983 is sustained.

DATED: Albany, New York

AUG 21 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER