

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
James Regnante :

AFFIDAVIT OF MAILING

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 Chapter 46, Title T of the Administrative :  
Code of the City of New York for the Year 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 30th day of October, 1985, he served the within notice of Decision by certified mail upon James Regnante, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James Regnante  
66-92 Selfridge St.  
Forest Hills, NY 11375

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  
30th day of October, 1985.

David Parchuck

Bernie A. Hegdorn

Authorized to administer oaths  
pursuant to Tax Law section 174

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

October 30, 1985

James Regnante  
66-92 Selfridge St.  
Forest Hills, NY 11375

Dear Mr. Regnante:

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 T 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	:	
JAMES REGNANTE	:	DECISION
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 Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the Year 1980.	:	

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Petitioner, James Regnante, 66-92 Selfridge Street, Forest Hills, New York 11375, 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 Chapter 46, Title T of the Administrative Code of the City of New York for the year 1980 (File No. 51595).

A 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 May 22, 1985 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

#### ISSUES

I. Whether an adjustment reducing petitioner's total New York itemized deductions to conform to his total federal itemized deductions was proper.

II. Whether an adjustment further reducing petitioner's total New York itemized deductions by the portion of his state and local income taxes claimed for federal purposes, but not subtracted in arriving at his total New York itemized deductions as claimed on his return, was proper.

FINDINGS OF FACT

1. James Regnante (hereinafter "petitioner") timely filed a 1980 New York State Income Tax Resident Return (with City of New York Personal Income Tax) whereon he claimed itemized deductions as follows:

<u>Deduction</u>	<u>Amount</u>
Medical and dental expenses	\$ 150.00
Taxes	3,539.00
Interest expense	3,873.00
Contributions	78.00
Miscellaneous deductions	9,050.00
Total	<u>\$16,690.00</u>
Less: State and local income taxes	<u>1,784.00</u>
Total New York itemized deductions claimed	<u><u>\$14,906.00</u></u>

2. According to information obtained from the Internal Revenue Service, as authorized by section 6103(d) of the Internal Revenue Code, petitioner claimed federal itemized deductions for 1980 as follows:

<u>Deduction</u>	<u>Amount</u>
Medical and dental expenses	\$ 150.00
Taxes (portion claimed for state and local income taxes was \$2,784.00)	3,539.00
Interest expense	2,373.00
Contributions	78.00
Miscellaneous deductions	8,550.00
Total Federal itemized deductions claimed	<u><u>\$14,690.00</u></u>

3. On February 10, 1984, the Audit Division issued a Statement of Audit Changes to petitioner wherein an adjustment of \$3,000.00 was made reducing his claimed total New York itemized deductions to \$11,906.00. The adjustment was explained in said Statement as follows:

"Error in computing New York itemized deductions -- deduction amounts listed in itemized deduction schedule do not agree with the amounts entered on your federal return.

Adjustment is required because you subtracted only a portion of state and local taxes included in federal itemized deductions rather than the full amount."

4. In response to the aforestated Statement of Audit Changes, petitioner submitted a letter dated March 2, 1984 wherein he stated, in pertinent part, that:

"I do not agree with your \$3000. adjustment to my return. I can find no differences in my return that justifies your adjustment of \$3000. Your notice did not come with any schedules or acceptable explanation that remotely explains the adjustment. Kindly sent (sic) me your computations of how you arrive at the 3000. Please reference all differences to the applicable section of the law.

As of now I can only state that my return has been correctly filed and your adjustment is arbitrary (sic) and capricious."

5. On April 5, 1984, the Audit Division issued a Notice of Deficiency against petitioner for the year 1980 asserting additional New York State personal income tax of \$330.00, additional New York City personal income tax of \$102.06, plus interest of \$154.65, for a total due of \$586.71.

6. During the hearing, petitioner failed to address himself to the substantive issues. Instead, he argued that the deficiency violates his rights under Article XIV of the United States Constitution because an audit was not conducted and the Audit Division, in his opinion, failed to satisfactorily explain the adjustments prior to the expiration of the period of limitation on assessments.

#### CONCLUSIONS OF LAW

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

"The New York itemized deductions 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..."

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

"The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

(1) income taxes imposed by this state or any other taxing jurisdiction..."

C. That sections T46-115.0(a) and T46-115.0(c) of the Administrative Code of the City of New York contain provisions substantially similar to those of sections 615(a) and 615(c)(1) of the Tax Law. Accordingly, the allowable itemized deductions for New York State purposes and for New York City purposes would be identical in the instant case.

D. That the explanation of adjustments provided in the Statement of Audit Changes dated February 10, 1984 was of sufficient detail and clarity so as to properly apprise petitioner of the nature of the adjustments at issue (see Finding of Fact "3", supra).

E. That the laws of the State and City of New York are presumed to be constitutionally valid at the administrative level of the State Tax Commission.

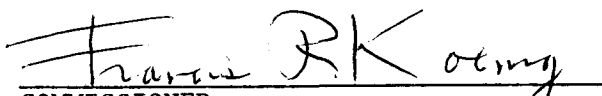
F. That the petition of James Regnante is denied and the Notice of Deficiency issued April 5, 1984 is sustained, together with such additional interest as may lawfully be owing.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 30 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER