

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Garson P. & Dorothy Reiner :

: 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 :
1961 & 1962. :

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 15th day of February, 1985, he served the within notice of Decision by certified mail upon Garson P. & Dorothy Reiner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Garson P. & Dorothy Reiner
c/o Regency Hotel
61st St. & Park Ave.
New York, NY

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
15th day of February, 1985.

David Parchuck

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
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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 1961 & 1962.

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 15th day of February, 1985, he served the within notice of Decision by certified mail upon Alan Tarr, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alan Tarr
Parker, Chapin, Flattau & Klimpl
530 Fifth Ave.
New York, NY 10036

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
15th day of February, 1985.

David Parchuck

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

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

February 15, 1985

Garson P. & Dorothy Reiner
c/o Regency Hotel
61st St. & Park Ave.
New York, NY

Dear Mr. & Mrs. Reiner:

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
Alan Tarr
Parker, Chapin, Flattau & Klimpl
530 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GARSON P. AND DOROTHY REINER	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1961 and 1962.	:	

Petitioners, Garson P. and Dorothy Reiner, c/o Regency Hotel, 61st Street and Park Avenue, New York, New York, 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 1961 and 1962 (File No. 01369).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 18, 1984 at 10:45 A.M. Petitioners appeared by Alan Tarr, Esq. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed deductions taken by petitioners on their personal income tax return for interest expenses, contributions and taxes.

FINDINGS OF FACT

1. Petitioners, Garson P. and Dorothy Reiner, filed a New York State Income Tax Resident Return for 1962.
2. On October 5, 1964, the Audit Division issued a Notice of Deficiency against petitioners in the amount of \$10,845.87, plus interest of \$575.24, for

a total of \$11,421.11, less tax previously paid of \$4,329.77, for a total amount due of \$7,091.34 for the taxable year 1962.¹

3. On July 7, 1967, based on additional information received, the Audit Division revised the tax due to \$9,997.26, less tax previously paid of \$4,550.00, for a revised tax due of \$5,447.26 plus interest.

4. The basis of the deficiency was the disallowance by the Audit Division of deductions of \$79,140.88 for interest expenses, \$20,600.00 for charitable contributions and \$10,865.00 for taxes. The deduction for taxes was accepted with the exception of water and sewer taxes in the amount of \$177.13. This modification was included in the revised tax due computed on July 7, 1967. Petitioners conceded that the water and sewer taxes were not deductible and the \$177.13 is no longer in issue.

5. The \$20,600.00 deduction for charitable contributions was comprised of \$20,000.00 to the Garson Reiner Foundation and \$600.00 to "Temple and other". The foundation was not approved by the Internal Revenue Service and petitioners conceded that the \$20,000.00 deduction was not allowable. Petitioners maintained that the remaining \$600.00 was allowable; however, they presented no substantiation of any kind showing that such amount was contributed to an approved charity.

6. In 1961, Mr. Reiner acquired stock of Exquisite Form Brassiere of Canada. The major part of the loan to purchase the stock was acquired from the Canadian Imperial Bank of Commerce with the stock used as collateral. The

1 Following a final federal determination for 1961, petitioners agreed to the amounts due for 1961 and 1962 is the only year remaining in issue.

remainder of the money for this stock purchase was acquired by unsecured loans from Richgold Trading Corp. ("Richgold") and Harold G. Lacks.

7. The \$79,140.88 deduction for interest expense was comprised of payments of \$44,965.88 to Canadian Imperial Bank of Commerce, \$22,800.00 to Richgold and \$11,375.00 to Harold G. Lacks. Petitioners submitted debit vouchers from the bank indicating that they paid interest to the bank totalling \$44,965.88 on a demand loan. Petitioners also submitted a letter from Richgold indicating that interest due for the period December 27, 1961 through March 13, 1962 was \$22,800.00; however, there was no evidence indicating whether such interest payments were made during the year in issue. With respect to the interest claimed to have been paid to Harold G. Lacks, petitioners submitted two checks paid to the order of Mr. Lacks in the amounts of \$11,000.00 and \$1,375.00 and dated March 29, 1962 and April 10, 1962, respectively. There was no evidence indicating the purpose for which these checks were drawn.

CONCLUSIONS OF LAW

A. That with respect to the deduction claimed for charitable contributions, petitioners have not met their burden of proof under section 689(e) of the Tax Law of establishing that they had \$600.00 in charitable contributions for taxable year 1962.


B. That with respect to the deduction for interest expenses claimed by petitioners, they have demonstrated that \$44,965.88 in payments to the Canadian Imperial Bank of Commerce were for interest on a loan used to purchase corporate stock and were, therefore, allowable as a deduction. There was insufficient evidence to show that the payments to Richgold and Harold G. Lacks were interest payments and, therefore, such payments were properly disallowed as deductions by the Audit Division.

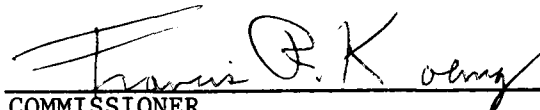
C. That the petition of Garson P. and Dorothy Reiner is granted to the extent indicated in Findings of Fact "3" and "4" and Conclusion of Law "B"; that the Audit Division is directed to modify the Notice of Deficiency issued October 5, 1964 accordingly; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 15 1985


PRESIDENT


COMMISSIONER


COMMISSIONER