

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of

Patrick O. Finnegan : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of NYS 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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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 3rd day of January, 1986, he served the within notice of Decision by certified mail upon Patrick O. Finnegan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Patrick O. Finnegan  
110 W. 96th St. #9D  
New York, NY 10025

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  
3rd day of January, 1986.

David Parchuck

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

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

January 3, 1986

Patrick O. Finnegan  
110 W. 96th St. #9D  
New York, NY 10025

Dear Mr. Finnegan:

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	:	
PATRICK O. FINNEGAN	:	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, Patrick O. Finnegan, 110 West 96th Street, Apt. #9D, New York, New York 10025, 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. 47893).

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 June 18, 1985 at 9:15 A.M. with all briefs to be submitted by July 18, 1985. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether petitioner is properly entitled to a disability income exclusion of \$5,200.00.

II. Whether the adjustment made to petitioner's claimed itemized deductions was proper.

FINDINGS OF FACT

1. Patrick O. Finnegan (hereinafter "petitioner") filed a New York State Income Tax Resident Return (with City of New York Personal Income Tax) for the year 1980 whereon he reported New York adjusted gross income of \$20,480.00 and New York itemized deductions of \$10,793.00, computed as follows:

Medical and dental expenses	\$ 3,755.00
Taxes	1,840.00
Contributions	153.00
Miscellaneous deductions	988.00
Total federal itemized deductions	\$ 6,736.00
Less: State & local income taxes	1,143.00
Balance	5,593.00
Plus: Disability income exclusion	5,200.00
New York itemized deduction claimed	<u>\$10,793.00</u>

2. On March 25, 1983, the Audit Division issued a Statement of Audit Changes to petitioner wherein his claimed disability income exclusion was disallowed. Additionally, his reported New York adjusted gross income of \$20,480.00 was increased to \$20,561.00 and his reported New York itemized deduction (exclusive of the modification claimed for the disability income exclusion) of \$5,593.00 was reduced to \$5,013.00. Part of the adjustment to petitioner's claimed itemized deductions resulted from his subtraction from total Federal itemized deductions of less than the full amount of state and local income taxes claimed as an itemized deduction for Federal purposes. All of the aforesaid adjustments were made to conform to amounts reported on petitioner's 1980 Federal return based on a Federal/State computer tape match. Accordingly, a Notice of Deficiency was issued against petitioner on June 29, 1983 asserting additional New York State and City personal income tax of \$596.19, plus interest of \$159.68, for a total due of \$755.87.

3. Petitioner argued that the Federal/State computer tape match is incorrect. He contended that he is still in the process of trying to have his 1980 Federal return adjusted but his efforts to date have been unsuccessful due to the loss or misplacement of his 1980 file by the Internal Revenue Service.

4. The Audit Division argued that aside from the Federal conformity basis for disallowance of petitioner's claimed disability income exclusion, said exclusion is not allowable pursuant to section 105(d) of the Internal Revenue Code.

#### CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides that:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with modifications (none of which are applicable herein) specified in this section."

For New York City purposes section T46-112.0(a) of the Administrative Code of the City of New York provides a substantially similar definition for city adjusted gross income.

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

"The New York itemized deduction 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 with modifications specified in this section."

For New York City purposes section T46-115.0(a) of the Administrative Code of the City of New York provides a substantially similar definition for city itemized deduction.

C. That section 615(c)(1) of the Tax Law and section T46-115.0(c)(1) of the Administrative Code of the City of New York provide that a modification be made for New York State and City purposes reducing Federal itemized deductions for income taxes imposed by this State or any other taxing jurisdiction.

D. That even if the disability income exclusion of \$5,200.00 had been claimed on petitioner's 1980 Federal return he still would not properly be entitled to claim such exclusion pursuant to Internal Revenue Code section 105(d), which requires a dollar for dollar reduction of such exclusion by the amount of Federal adjusted gross income in excess of \$15,000.00. In the instant case such excess is \$5,561.00 (\$20,561.00 less \$15,000.00) which would reduce such claimed exclusion of \$5,200.00 to zero.

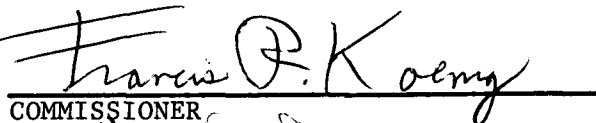
E. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that the deficiency asserted was erroneous or improper.

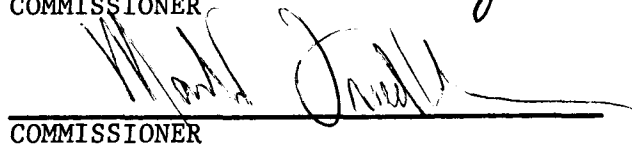
F. That the petition of Patrick O. Finnegan is denied and the Notice of Deficiency issued June 29, 1983 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
JAN 03 1986

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER