STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Alfred E. Wilcox	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision of a Determination or Refund of Personal Income Tax under Article(s) 22 of the Tax Law for the Year 1974.	:	

State of New York :
ss.:
County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of February, 1987, he/she served the within notice of Decision by certified mail upon Alfred E. Wilcox the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alfred E. Wilcox
573 Freeman St.
Corning, NY 14830

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
20th day of February, 1987.

Authorized to administer oaths
pursuant to Tax Law section 174

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

February 20, 1987

Alfred E. Wilcox
573 Freeman St.
Corning, NY 14830

Dear Mr. Wilcox:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of ALFRED E. WILCOX for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1974.	DECISION

Petitioner, Alfred E. Wilcox, 573 Freeman Street, Corning, New York 14830, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 24932).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York, on June 17, 1986 at 1:15 P.M., with all documents to be submitted by July 1, 1986. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUES

I. Whether petitioner was entitled to claim an exemption and child care deduction for his son.

II. Whether petitioner was able to substantiate the amount claimed for certain business and personal deductions.

FINDINGS OF FACT

1. Petitioner, Alfred E. Wilcox, timely filed a New York State Income Tax Resident Return for the year 1974. On this return, petitioner reported that he was a mason and claimed two exemptions, certain adjustments to income and various itemized deductions.

2. On April 4, 1978, the Audit Division issued a Notice of Deficiency to petitioner, Alfred E. Wilcox, asserting a deficiency of personal income tax for the year 1974 in the amount of $264.24, plus interest of $66.62, for a total amount due of $330.86. The revised Statement of Audit Changes, which was issued on September 12, 1977, explained that the proposed deficiency of personal income tax was based upon the disallowance of a series of items which petitioner claimed on his New York State Income Tax Resident Return for the year 1974. The revised Statement of Audit Changes explained that items adjusted were as follows:

Item	Claimed	Allowed	Adjustment
Exemption	$ 650.00	$ -0-	$ 650.00
Child Care	170.06	-0-	170.06
Travel expenses	1,468.65[1]	129.16	1,339.49
Contributions	318.00	104.00	214.00
Equipment	374.94	258.85	116.09

3. The exemption and child care expenses were disallowed because petitioner did not have custody of his son. The travel expenses were allowed to the extent that petitioner was able to document travel out of the area of his home plus 200 miles for travel between different plants in Corning, New York for Corning Glass Works less reimbursement provided by his employer. The charitable contributions and equipment expenses were allowed to the extent that petitioner was able to furnish documentation substantiating these expesnes.

4. During the year in issue, petitioner's son, Matthew, lived with petitioner from January 1974 through approximately the end of June 1974. On or about September 16, 1974, petitioner and his wife entered into a separation agreement which provided that petitioner's wife would be granted custody of

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1 In fact, the amount of travel expenses claimed was $1,462.65.

Matthew. The agreement also provided that petitioner was to pay his wife $25.00 per week for the support of his child. Furthermore, the agreement provided that petitioner would have the right to claim the child as a dependent for income tax purposes.

5. On October 10, 1974, petitioner obtained a judgment of divorce from his wife. The divorce decree provided that the separation agreement would be incorporated but not merged in the divorce decree.

6. After the separation agreement was entered into, petitioner paid for his son's expenses plus $25.00 per week. Petitioner paid more than $600.00 during 1974 to support his son.

7. During the year in issue, petitioner was employed as a mason for Corning Glass Works. In this capacity, it was necessary for petitioner to travel from one plant site to another. It was the policy of Corning Glass Works to reimburse petitioner for out-of-town mileage in the United States at a rate of $.12 per mile and to provide reimbursement for travel in Canada at a rate of $.125 per mile. Mileage within Corning, New York was not reimbursed. At the hearing, petitioner presented a schedule of travel reimbursement from Corning Glass Works showing that petitioner was reimbursed during 1974 for a total of 3,438 miles resulting in a reimbursement of $416.54. In contrast, petitioner reported business travel mileage of 12,140 and reimbursement of $370.80 on his income tax return for 1974.

8. During the year in issue, petitioner was required to travel on behalf of his trade union. Petitioner considered this mileage deductible on his income tax return. The record is unclear whether petitioner's travel on behalf of his union accounts for the total of the additional mileage reported on the income tax return in excess of that reimbursed by the employer.

9. No evidence was presented as to whether petitioner received income from his activities on behalf of the union.

10. At the hearing, petitioner presented a sufficient number of invoices and cancelled checks to substantiate the amount petitioner claimed on his income tax return for equipment expenses.

11. At the hearing, petitioner presented a group of payroll statements to establish that he contributed $.50 per week to a charitable organization through payroll deductions.

CONCLUSIONS OF LAW

A. That, during the year in issue, it was permissible for parents who have divorced or separated to agree that the noncustodial parent may claim an exemption for a dependent child (Treas. Reg. § 1.152-4[d][2]). Since such an agreement was entered into, the fact that petitioner did not have custody of his son did not preclude him from being entitled to claim his son as an exemption.

B. That, with respect to the child care deduction during the year in issue, a child could be treated as a qualifying individual for a parent not having custody when the dependency exemption was released by the noncustodial parent (I.R.C. §151[e]; §§152, 214 [amended 1976]). Thus, the asserted ground for the denial of the deduction of expenses for household and dependent care services was erroneous as a matter of law. Consequently, the proposed adjustment eliminating the deduction for child care service is rejected.

C. That petitioner has failed to sustain his burden of proof of establishing that he is entitled to travel expenses in excess of those permitted by the Audit Division (Tax Law §689[e]). It is noted that petitioner has not shown that travel expenses on behalf of his union were deductible as either related to a trade or business (I.R.C §162[a][2]) or expenses related to the production

of income (I.R.C. §212). However, in view of the typographical error noted in footnote "1", the adjustment of travel expenses should be reduced by $6.00.

D. That petitioner has failed to sustain his burden of proof of establishing that the amount of the charitable contributions allowed by the Audit Division was unreasonable or improper (Tax Law §689[e]).

E. That petitioner has submitted sufficient documentary evidence in the form of invoices and cancelled checks to substantiate the amount claimed on his income tax return for equipment expenses. Thus, the proposed adjustment to petitioner's deduction for equipment expenses is rejected.

F. That the petition of Alfred E. Wilcox is granted to the extent of Conclusions of Law "A", "B", "C" and "E" and the Audit Division is directed to modify the Notice of Deficiency, issued April 4, 1978, accordingly; as modified, the Notice of Deficiency is sustained.

DATED: Albany, New York

FEB 20 1987

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER