

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Daniel F. Meenan

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1974. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of June, 1980, he served the within notice of Decision by certified mail upon Daniel F. Meenan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel F. Meenan
24 Aqueduct Lane
Hastings-on-Hudson, NY

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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
18th day of June, 1980.

Joanne Knapp

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of June, 1980, he served the within notice of Decision by certified mail upon Jerry Schneider the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Jerry Schneider
Schultz, Hitzik, Sperling & Schneider
1 Pennsylvania Plaza Suite 1706
New York, NY 10001

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 18, 1980

Daniel F. Meenan
24 Aqueduct Lane
Hastings-on-Hudson, NY

Dear Mr. Meenan:

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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Jerry Schneider
Schultz, Hitzik, Sperling & Schneider
1 Pennsylvania Plaza Suite 1706
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
DANIEL F. MEENAN
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1974.

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DECISION

Petitioner, Daniel F. Meenan, 24 Aqueduct Lane, Hasting-on-Hudson, 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 year 1974 (File No. 15883).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 22, 1979. Petitioner appeared by Jerry Schneider, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner can substantiate alimony payments of \$4,070.00, four exemptions, and miscellaneous deductions of \$2,657.00.

FINDINGS OF FACT

1. Petitioner, Daniel F. Meenan, timely filed a New York State Income Tax Resident Return for the year 1974.

2. On May 24, 1976, the Audit Division issued a Notice of Deficiency in the sum of \$1,428.29 for the year 1974, along with an explanatory Statement of Audit Changes, which outlined the basis for the deficiency as follows:

"Since you failed to appear for your appointment on September 26, 1975, the items below are disallowed as unsubstantiated."

"The State refund you received is not a proper addition at line 2, of your N.Y.S. return."

"The modification for state & local income taxes at line 6d has been adjusted to reflect modification for City income taxes."

"Your total itemized deduction have been adjusted to reflect an error in addition."

"Exemptions for N.Y. purposes are \$650.00 each. Since you claimed 5 exemptions you should have deducted \$3,250.00 instead of \$3,200.00 you claimed."

<u>ITEM</u>	<u>AMOUNT REPORTED ON RETURN</u>	<u>CORRECTED AMOUNT</u>	<u>ADJUSTMENT</u>
Alimony	\$ 4,070.00	\$ -0-	\$ 4,070.00
Exemptions	3,250.00	650.00	2,600.00
Miscellaneous	2,657.00	-0-	2,657.00
Line 2: N.Y. Refund	123.00	-0-	(123.00)
Line 6d State & Local Income Taxes	1,219.76	1,162.08	(57.68)
Taxes	2,273.01	1,619.78	653.23
Total Itemized Deductions Claimed	10,698.00	10,126.00	572.00
Total Exemptions Claimed	3,200.00	3,250.00	(50.00)
	TOTAL ADJUSTMENT		<u>\$10,321.55</u>

At the hearing of October 22, 1979, it was pointed out that the aforementioned Statement of Audit Changes contained a typographical error. The adjustment to "Total Itemized Deductions Claimed" should be \$572.00, not \$512.00. This correction does not alter the total adjustment of \$10,321.55. The issues raised by petitioner were the adjustments to alimony, exemptions and miscellaneous deductions.

3. Petitioner and his former wife signed a separation agreement on December 8, 1973, which provided that "the Husband shall pay the sum of \$185.00 per week for the support and maintenance of the Wife and Children." On March 22, 1974, a judgement of divorce was granted, and it was ordered that petitioner pay "the sum of \$185.00 per week as alimony and maintenance of the children, which said total sum is inclusive of all obligations of the defendant (petitioner) for the support and maintenance of the plaintiff (former wife) and the children." In support of alimony payments actually made, the following items were submitted:

- (a) four money order stubs, totalling \$1,390.00, indicating the month and day of payment but not the year.
- (b) six cancelled checks totalling \$1,880.00 payable to petitioner's former wife and dated during the year 1974.
- (c) a cancelled check for \$400.00, payable to petitioner's former wife, dated May 28, 1974 with a notation "for taxes".
- (d) three money order receipts, totalling \$920.00 payable to petitioner's former wife and dated during the year 1974.

4. The U.S. Individual Income Tax Return filed for the year 1974, indicates the name of the child, "Daniel" as a dependent child residing with petitioner. Petitioner also claimed three "other dependents", but failed to name them or provide the additional information requested by the aforementioned return. Petitioner's representative stated that the three children listed on petitioner's 1975 return, (Mary, Laura and Michael Meenan) were the same children claimed for the year 1974. The sole evidence submitted as child support for the dependent children at issue were as follows:

- (a) three cancelled checks payable to petitioner's former wife, totalling \$1,020.00. Two of the checks contained the notation, "child support".
- (b) two cancelled checks payable to Diane Meenan, totalling \$680.00. One check contained the notation, "child support".
- (c) a cancelled check for \$1,049.00, payable to "S.U.C.O.".
- (d) a cancelled check for \$1,045.00 payable to "State University at Brockport".
- (e) a money order receipt payable to Mary Meenan for \$20.00.

5. Petitioner submitted a cancelled check, payable to AFTRA (American Federation of Television and Radio Artists) for \$100.00 in support of union dues.

6. Petitioner, Daniel F. Mennan, is a radio news reporter, and in that capacity, it was contended that he was required to incur entertainment expenses, auto expense, and expenses for newspapers and periodicals. In support of these deductions, checks totalling \$1,179.75 payable to an auto leasing firm,

along with a diary were submitted. The information contained within the diary was sparse and frequently illegible. Evidence as to whether petitioner was required by his employer to incur the expenses at issue without reimbursement was not submitted.

CONCLUSIONS OF LAW

A. That tax deductions and exemptions depend upon clear statutory provisions, and the burden is upon the taxpayer to establish a right to them. (Matter of Grace v. New York State Tax Comm., 37 N.Y.2d 193; Matter of Central Office Alarm Co. v. State Tax Comm., 58 A.D.2d 162.)

B. That the petition of Daniel F. Meenan is granted to the extent established by a fair preponderance of the evidence submitted; to wit, alimony payments of \$2,800.00 and union dues of \$100.00.

C. That petitioner Daniel F. Meenan has failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, in establishing that he was entitled, in accordance with the Internal Revenue Code and Article 22 of the Tax Law, to deductions and/or exemptions greater than those granted by paragraph B of this decision.

D. That the Audit Division is hereby directed to modify the Notice of Deficiency issued May 24, 1976 in accordance with paragraph B of this decision; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUN 18 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER