

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Abraham & Mary K. Rosenberg :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income & UBT :
under Article 22 & 23 of the Tax Law
for the Year 1971. :

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 Abraham & Mary K. Rosenberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Abraham & Mary K. Rosenberg
151-15 84th St.
Howard Beach, NY 11414

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

J. J. Vredenburg

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

June 18, 1980

Abraham & Mary K. Rosenberg
151-15 84th St.
Howard Beach, NY 11414

Dear Mr. & Mrs. Rosenberg:

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 & 722 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	DECISION
ABRAHAM ROSENBERG and MARY K. ROSENBERG	:	
for Redetermination of Deficiencies or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of	:	
the Tax Law for the Year 1971.	:	

Petitioners, Abraham Rosenberg and Mary K. Rosenberg, 151-15 84th Street, Howard Beach, New York 11414, have filed a petition for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1971 (File No. 16115).

A small claims 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 January 9, 1980 at 10:45 A.M. Petitioner Abraham Rosenberg appeared pro se and for his wife. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner Abraham Rosenberg has properly claimed business expense deductions for the use of part of his residence as an office, medical insurance premiums, postage and stationery, carfare and cabs and telephone expense.

FINDINGS OF FACT

1. Petitioners, Abraham Rosenberg and Mary K. Rosenberg, timely filed a joint New York State Income Tax Resident Return for the year 1971. Additionally, petitioner Abraham Rosenberg timely filed a New York State Unincorporated

Business Tax Return for said year wherein he reported income and deductions from the business activities he was engaged in as an independent sales representative for various manufacturers of electronic equipment.

2. On December 23, 1974, as the result of an audit, the Income Tax Bureau issued petitioners a Statement of Audit Changes with respect to personal income tax. Adjustments per said statement were to amounts claimed for use of home as an office, insurance, and "other business expenses", which was comprised of deductions claimed for postage and stationery, carfare and cabs and telephone expense. Additionally, a credit adjustment of \$895.12 was allowed for medical and dental expenses. Also, on the above stated date, the Bureau issued a Statement of Audit Changes, with respect to unincorporated business tax, to petitioner Abraham Rosenberg. Said statement included identical adjustments as were made for personal income tax purposes, except that the aforementioned medical and dental expense credit adjustment was excluded. Accordingly, on December 23, 1974, two notices of deficiency were issued; one asserting additional personal income tax of \$101.56, penalty of \$5.08, and interest of \$16.44, for a total due of \$123.08, and the second asserting unincorporated business tax of \$143.40, penalty of \$7.17, and interest of \$23.22, for a total due of \$173.79.

3. During the year at issue, petitioner Abraham Rosenberg was engaged in business as an independent sales representative. Since he was not provided with office space by any of his principals, he used part of his residence as an office and claimed a business deduction for such use of \$900.00. Petitioner resided with his wife and two other family members in a condominium apartment which consisted of two bedrooms, a living room, a kitchen and a bathroom. Approximately 25 percent of the living room space was used by him for business purposes. This area contained a desk, file cabinet and storage area. On

audit, the Income Tax Bureau allowed petitioner a depreciation deduction equal to 25 percent of the depreciation computed for the entire apartment. Additionally, 25 percent of the total electric bill was allowed. The allowance computed on this basis by the Bureau totaled \$242.00. Petitioner, who contended that he is entitled to a greater deduction than allowed, computed his home office deduction claimed, based on an estimate of what it would have cost to rent desk space in an office building, rather than the actual expenses incurred in maintaining an office in his home.

4. Petitioner claimed a business expense deduction for medical insurance premiums. He contended that said deduction is allowable as a business expense since the premiums were deducted by one of his principals from his gross commissions. On audit, the Income Tax Bureau disallowed said deduction as a business expense and, in turn, allowed same as a medical and dental expense for personal income tax purposes; thereby giving rise to a medical and dental expense credit in the amount of \$895.12.

5. Petitioner claimed business expense deductions for postage and stationery of \$1,280.00, carfare and cabs of \$1,840.00 and telephone of \$960.00. On audit, the Income Tax Bureau allowed half of the amounts claimed for these deductions. Petitioner testified that the amounts claimed were estimated. He did not keep a timely record of these expenses as incurred, and offered no documentation in support of same during the hearing held herein.

CONCLUSIONS OF LAW

A. That petitioner Abraham Rosenberg has not sustained his burden of proof, required pursuant to section 689(e) of the Tax Law, to establish that he is entitled to a greater deduction than previously allowed by the Income Tax Bureau, as the result of an audit, for the following expenses claimed:

- (1) use of home as a business office
- (2) postage and stationery
- (3) carfare and cabs, and
- (4) business telephone.

Accordingly, the adjustments to these deductions are sustained.

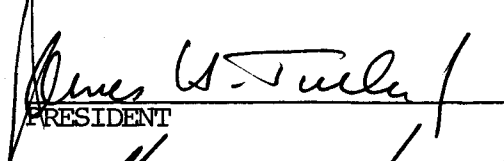
B. That medical insurance premiums are properly deductible as a medical expense rather than a business expense pursuant to section 213 of the Internal Revenue Code and Articles 22 and 23 of the Tax Law.

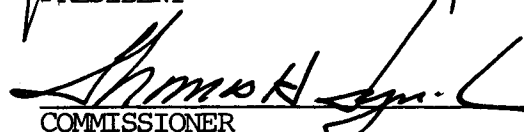
C. That the petition of Abraham Rosenberg and Mary K. Rosenberg is denied and the notices of deficiency, with respect to personal income tax and unincorporated business tax, dated December 23, 1974 are sustained together with such additional penalties and interest as may be lawfully owing.


DATED: Albany, New York

JUN 18 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER