

STATE OF-NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

ANGELO GUTIERREZ AND :
RUTH GUTIERREZ :

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 Years 1981, 1982 and 1983. :

Petitioners, Angelo Gutierrez and Ruth Gutierrez, 83-65 116th Street, Kew Gardens, New York 11418, filed an exception to the determination of the Administrative Law Judge issued on October 16, 1987 with respect to their 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 years 1981, 1982 and 1983 (File Nos. 802990 and 802991). Petitioner appeared by Louis F. Brush, P.C. (Louis F. Brush, Esq., of Counsel). The Division of Taxation appeared by William F. Collins, Esq. (Angelo Scopellito, Esq., of Counsel).

Neither of the parties requested oral argument on this exception and neither party filed a brief.

After reviewing the entire record, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Administrative Law Judge properly disallowed the petitioners' claimed deduction of \$725 for mortgage recording tax and \$4,839 for medical expenses in 1982 and \$8,584 for medical expenses and \$2,026.93 for interest payments in 1983.

FINDINGS OF FACT

Petitioners waived a hearing and submitted the matter for determination based on the Division of Taxation's file and additional documents submitted by the petitioners. We find the facts as stated in the Administrative Law Judge determination and such facts are incorporated herein by this reference.

OPINION

The petitioners argue, on exception, that the Administrative Law Judge erred in finding the evidence offered by petitioners insufficient to prove that they were entitled to certain personal income tax deductions. We disagree with the petitioners for the following reasons.

Mortgage Recording Tax

Petitioners would be entitled to a deduction for the mortgage recording tax imposed by Article 11 of the Tax Law in 1982, only if the tax qualified as a deduction for Federal purposes under section 164 of the Internal Revenue Code. Petitioners did not submit any evidence indicating that the mortgage recording tax was paid in carrying on a trade or business or as an expense for the production of income within the meaning of such section of the Code. Therefore, petitioners are not entitled to a deduction for such tax.

A credit against the New York State personal income tax was allowable in 1982 under section 606(f) of the Tax Law only for the special additional mortgage recording tax imposed pursuant to section 253(1-a) of the Tax Law.

The special additional mortgage recording tax would have been payable by the petitioners, as mortgagors, only if the premises were improved by a structure containing more than six residential units. The petitioners have not substantiated that they paid such special additional mortgage recording tax and thus have not substantiated that they are entitled to a credit.

Medical Expenses

With respect to the medical expenses, the notices of deficiency issued to the petitioners involved a disallowance of \$4,270 in claimed medical expenses in 1982 and \$2,479 in 1983. As part of their hearing submission, the petitioners increased their claimed deductible medical expenses to \$4,839 in 1982 and \$8,584 in 1983.

Petitioners did not support their total claimed medical expense deduction with copies of bills and canceled checks in payment of such bills. Further, petitioners claimed deductions do not take into account that medical expenses were deductible under section 212 of the Internal Revenue Code only to the extent they exceeded 3% of adjusted gross income in 1982 and 5% of adjusted gross income in 1983. The Administrative Law Judge held that the petitioners did not sustain their burden to prove that they were entitled to any portion of the claimed medical expense deductions in 1982 or 1983. We agree with the Administrative Law Judge's determination.

Interest Expense

Finally, petitioners claim that they are entitled to an additional interest expense deduction of \$2,026.93 in 1983 above that allowed by the Administrative Law Judge. The petitioners did not submit any evidence indicating that this additional amount was in fact interest expense. The Administrative Law Judge held that the petitioners had failed to sustain their burden to prove that they were entitled to this amount as an interest expense. We agree with the Administrative Law Judge's determination.

Accordingly, it is ORDERED, ADJUDGED AND DECREED that:

1. The exception of the petitioners is in all respects denied;
2. The determination of the Administrative Law Judge is affirmed;
3. Except to the extent modified by Conclusions of Law "A", "C" and "D"

of the determination, the petition of Angelo Gutierrez and Ruth Gutierrez is denied and the notices of deficiency issued on November 22, 1985 are sustained.

DATED: Albany, New York
APR 14, 1988

John P. Dugan
President

Francis R. Koenig
Commissioner