

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL K. GOLDBERG & BESSIE GOLDBERG  
(Deceased)

For a Redetermination of a Deficiency or  
a Refund of Personal Income :  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1966 :

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 22nd day of September , 1971 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Paul K. Goldberg &  
Bessie Goldberg (representative of) the petitioner in the within  
(Deceased)  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Paul K. & Bessie Goldberg  
3206 Fairfield Avenue  
Riverdale, New York 10463  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

22nd day of September , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
PAUL K. GOLDBERG & BESSIE GOLDBERG (Deceased) :  
for Redetermination of Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1966. :  
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DECISION

Petitioners, Paul K. Goldberg and Bessie Goldberg (deceased), have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1966. (File #69322492). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on March 23, 1971, at 2:55 P.M. Petitioner, Paul K. Goldberg, appeared pro se and for petitioner, Bessie Goldberg (deceased). The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert J. Rossi, Esq., of Counsel).

ISSUES

I. Did petitioner, Bessie Goldberg's, death in the year 1966, before recovering her contributions to the Teacher's Retirement System of the City of New York result in a deductible loss equal to the unrecovered portion of said contributions?

II. Did petitioner, Paul K. Goldberg, properly deduct automobile expenses incurred during the year 1966 in excess of the amount reimbursed by New York State for transportation expenses?

FINDINGS OF FACT

1. Petitioners, Paul K. Goldberg and Bessie Goldberg (deceased), filed a New York State income tax resident return for the year 1966. On said return, they deducted \$673.97 for unreimbursed business travel expenses of petitioner, Paul K. Goldberg, and \$5,460.30 for nonrecoverable contributions to the Teacher's Retirement System of the City of New York of petitioner, Bessie Goldberg (deceased).

2. On January 22, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Paul K. Goldberg and Bessie Goldberg (deceased), disallowing, for the year 1966, the aforesaid travel expenses and pension claim loss and accordingly issued a Notice of Deficiency in the sum of \$138.11.

3. Bessie Goldberg was employed as a school secretary by the Board of Education of the City of New York for fifteen years prior to her retirement. She became a member of the retirement system for the purpose of seeking security during the term of her life and not for profit. She became disabled during the year 1965. She thereupon applied to the Teacher's Retirement System of the City of New York for disability retirement. Her application was approved on January 20, 1966. She was awarded an annual disability retirement allowance of \$1,894.00 to be paid in monthly installments dating from December 14, 1965. Her annuity reserve at date of retirement was \$6,706.81. It was made up of contributions of \$5,702.34 and interest of \$1,004.38. She did not select an optional benefit in accordance with the provisions of section B20-46.0 of the Administrative Code of the City of New York and was therefore awarded

the maximum benefit payable under the provisions of the retirement law.

4. Petitioner, Bessie Goldberg, died on July 27, 1966. As of that date, her annuity reserve made up of contributions had been reduced to \$5,460.30. After the date of her death, neither her estate or heirs were entitled to any further benefits, payments, or return of contributions from the Teacher's Retirement System of the City of New York.

5. During the year 1962, petitioner, Paul K. Goldberg, was employed by the Department of Audit and Control of the State of New York as a field auditor. In connection with his official assignments he was required to travel throughout the State of New York. He was permitted to use his own automobile for travel on New York State business. He received a total of \$462.32 from the State of New York for reimbursement of travel expenses incurred during said year. The amount of reimbursement was based upon the bus or train fare to and from New York City to the location where the audit was conducted. His actual automobile traveling expenses while on New York State business exceeded the amount reimbursed by \$603.68.

#### CONCLUSIONS OF LAW

A. That petitioner, Bessie Goldberg's, participation in the Teacher's Retirement System of the City of New York did not constitute a transaction entered into for profit and therefore no deductible loss was sustained when she died before receiving a return of her contributions to the retirement system. Internal Revenue Code section 165(c)(2). Industrial Trust Co. v Broderick, 94 F 2d 927 (CA-4), Cert Den. 304 U.S. 572.

B. That the automobile expenses incurred by petitioner, Paul K. Goldberg, during the year 1966, in excess of the amount reimbursed by New York State for transportation expenses, for the use of his personal automobile in the course of his duties for New York State were deductible since the use of his own automobile was based upon the requirements of his employment. Internal Revenue Code Regulations §1.162-2(a).

C. That the petition of Paul K. Goldberg and Bessie Goldberg (deceased) is granted to the extent of reducing their corrected New York taxable income for the year 1966 from \$10,569.04 to \$9,965.36 and of reducing personal income tax due from \$132.02 to \$89.77 and the Notice of Deficiency issued January 22, 1969, is reduced from \$138.11 to \$93.91 together with such interest as may be due from January 22, 1968, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

*September 22, 1971*

STATE TAX COMMISSION

*Norman Gallman*  
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COMMISSIONER

*Bruce Nealey*  
\_\_\_\_\_  
COMMISSIONER

*Milton Kvein*  
\_\_\_\_\_  
COMMISSIONER