

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
NICHOLAS FINDLER
and
CATHERINE FINDLER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (X) 22 of the :
Tax Law for the Year(s) ~~XXXXXX~~ 1971:

State of New York
County of Albany

Catherine Steele, 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 13th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Nicholas Findler and Catherine Findler (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Nicholas Findler
583 Kings Highway
Snyder, New York 14226
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~~ ~~XXXXXX~~ 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

13th day of August, 1976.

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 13, 1976

TELEPHONE: (518) **457-3850**

Mr. & Mrs. Nicholas Findler
583 Kings Highway
Snyder, New York 14226

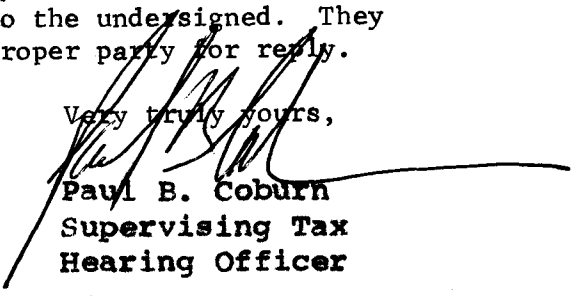
Dear Mr. & Mrs. Findler:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~205~~ **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: ~~Handwritten text~~

Taxing Bureau's Representative:

STATE TAX COMMISSION

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the Office of the State Tax Commission, State Office Building, Buffalo, New York, on Wednesday, April 28, 1976, at 12:00 o'clock noon. Nicholas Findler appeared for petitioners. The Income Tax Bureau appeared by Peter J. Crotty (Richard Kaufman, Esq. of counsel).

ISSUE

Whether the petitioners, Nicholas Findler and Catherine Findler were entitled to a deduction of Catherine Findler's educational expenses in 1971 as an ordinary and necessary business expense.

FINDINGS OF FACT

1. Petitioners, Nicholas Findler and Catherine Findler filed a joint New York State resident income tax return for the year 1971.

2. In 1969, Catherine Findler was teaching several courses in Data Processing and Computer Science at Erie County Technical Institute. In 1969 she left the Erie County Technical Institute to engage in graduate work in Computer Science. She did so to maintain her skill in teaching and to fulfill the prerequisites of a tenured position. She could not continue with her studies in 1969 because of several operations and a prematurely born child.

3. In 1971, Catherine Findler returned to the University of Kentucky to procure a masters degree in Computer Science. Catherine Findler was not employed at that time. Her last position was with the Erie County Technical Institute in 1969. She resumed teaching Computer Science in 1973 at Canisius College.

4. Petitioners, Nicholas Findler and Catherine Findler, deducted on their New York State income tax return, \$1,848.22, representing the amount expended by Catherine Findler for educational expenses in 1971. They deducted the aforementioned amount as an ordinary and necessary business expense. The Income Tax Bureau disallowed the deduction because Catherine Findler was not employed during the year 1971. A deficiency of \$207.09 was assessed, which with an interest charge of \$23.12, totaled \$230.21.

CONCLUSIONS OF LAW

A. That an individual is permitted to deduct the cost of a full-time graduate program, where the taxpayer, in order to maintain or improve skills required in his employment, temporarily ceases to engage actively in employment or other trade or business. He is not allowed such deduction when employment is suspended for longer than a year.

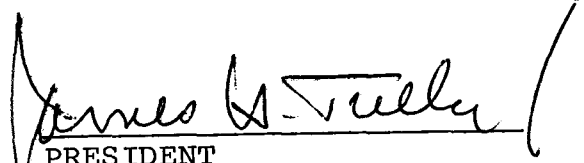
Rev. Rul 68-591, 1968-2 CB73.

B. That the petitioner, Catherine Findler, suspended her employment as a teacher for more than a year (1969-1973). And therefore, the deduction was properly disallowed. There is no exception to the above rule that would allow such deduction when suspension of employment is due to medical complications.

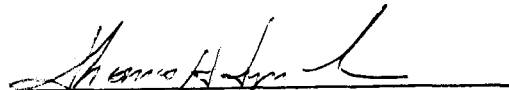
C. That the petition of Nicholas Findler and Catherine Findler is denied, and the Notice of Deficiency issued February 25, 1974, is sustained.

DATED: Albany, New York
August 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER