

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY AND MEREDITH LERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(3)~~ 22 of the :  
Tax Law for the Year ~~(3) XXX Period(s)~~ :  
1973

State of New York  
County of Albany

Marsina Donnini, 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 24th day of August, 19 77, she served the within  
Notice of Decision by (certified) mail upon Henry & Meredith Lerman  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Henry & Meredith Lerman  
600 West 239th Street  
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 Postal Service within the State of New York.

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

24th day of August, 1977.

Marsina Donnini

Janet Bach



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

August 24, 1977

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

Henry & Meredith Lerman  
600 West 239th Street  
Riverdale, New York 10463

Dear Mr. & Mrs. Lerman:

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 ~~XX~~ **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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

*Joseph Chyrywaty / meq*  
**JOSEPH CHYRYWATY**  
Hearing Examiner

~~xxxxxx~~ ~~Partners' Representative~~

Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
HENRY AND MEREDITH LERMAN : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Taxes under :  
Article 22 of the Tax Law for the Year 1973. :  
:

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on October 21, 1976 at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner, Henry Lerman, appeared pro se and for his wife, petitioner, Meredith Lerman. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

Were amounts claimed as miscellaneous expenses properly deducted by petitioners, Henry and Meredith Lerman, on the New York State income tax resident return they filed for the year of 1973?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioners, Henry and Meredith Lerman, claimed deductions on their New York State income tax resident return filed for the year of 1973 as follows:

<u>ITEM</u>	<u>AMOUNT OF DEDUCTION</u>
Medical and Dental Expense	\$ 1,276.41
Interest	8,223.44
Taxes	1,305.09
Contributions	458.00
Miscellaneous Deductions	11,248.82

2. In addition to the aforesaid deductions, petitioners, Henry and Meredith Lerman, claimed \$4,108.79 as employee business expenses and deducted said amount in arriving at Federal adjusted gross income for the year 1973.

3. On October 27, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, Henry and Meredith Lerman, in the sum of \$574.95, on the basis of the partial disallowance of amounts claimed by petitioners as employee business expenses and miscellaneous deductions to the extent of \$180.20 and \$5,072.84, respectively.

4. Petitioners, Henry and Meredith Lerman, are in disagreement with the disallowance of miscellaneous deductions to the extent of \$5,072.84. The disallowance of employee business expenses to the extent of \$180.20 is not at issue; however, petitioner, Henry Lerman, submitted receipts which he contends substantiate additional travel expenses of \$436.01 not deducted on their 1973 New York State income tax resident return.

5. The miscellaneous deductions in the sum of \$5,072.84 consist of the following:

<u>ITEM</u>	<u>AMOUNT</u>
Business gifts expense	\$1,353.37
Advertising Expense	2,936.51
Travel Expenses incurred as a stockholder	784.20

The difference of \$1.24 between petitioners' figures and the Income Tax Bureau's disallowance of miscellaneous deductions is not material to the issue.

6. Petitioners, Henry and Meredith Lerman, did not present documentary evidence such as purchase invoices, checks, etc. in support of the amounts claimed as business gifts expense.

7. The advertising expense claimed by petitioners, Henry and Meredith Lerman, was incurred by petitioner, Henry Lerman, in an attempt to promote Diagnostic Data, Inc., a corporation in which he has a substantial investment and is a four percent shareholder.

8. The travel expense claimed by petitioners, Henry and Meredith Lerman, was incurred by petitioner, Henry Lerman, in connection with his attendance at a stockholders meeting and a visit to the facilities of Diagnostic Data, Inc.

9. Petitioners, Henry and Meredith Lerman, did not present evidence to support their claim that the \$436.01 of additional employee business expenses was not previously deducted or that the expenses were incurred in connection with petitioner, Henry Lerman's employment.

10. That petitioners, Henry and Meredith Lerman, did not sustain the burden of proof necessary to support the amounts claimed as business gifts expense and therefore the deduction was properly disallowed by the Income Tax Bureau.

11. That the expenses incurred by petitioner, Henry Lerman, in connection with the advertisements promoting Diagnostic Data, Inc. are not "ordinary and necessary" expenditures within the meaning and intent of sections 162 or 212 of the Internal Revenue Code and therefore the Income Tax Bureau properly disallowed the deduction.

12. That the expenses incurred by petitioner, Henry Lerman, in connection with his attendance at the annual stockholders meeting are nondeductible personal expenses (Rev. Rul. 56-511, CB 1956-2, 170) and therefore the Income Tax Bureau properly disallowed the deduction.

13. That the expenses incurred by petitioner, Henry Lerman, in connection with his visit to the facilities of Diagnostic Data, Inc. are not "ordinary and necessary" within the meaning and intent of sections 162 or 212 of the Internal Revenue and therefore said deduction was properly disallowed by the Income Tax Bureau.

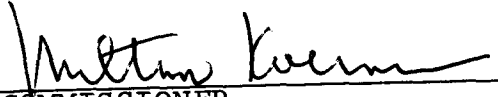
14. Petitioners, Henry and Meredith Lerman, did not sustain the burden of proof necessary to support their claim for additional employee business expenses.

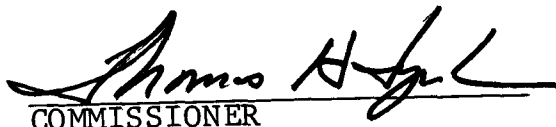
15. The petition of Henry and Meredith Lerman is denied and the Notice of Deficiency issued on October 27, 1975 is sustained.

DATED: Albany, New York  
August 24, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER