

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Lester J. Besen :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income Tax :  
under Article 22 of the Tax Law :  
for the Years 1969 & 1970. :

AFFIDAVIT OF MAILING

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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Lester J. Besen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

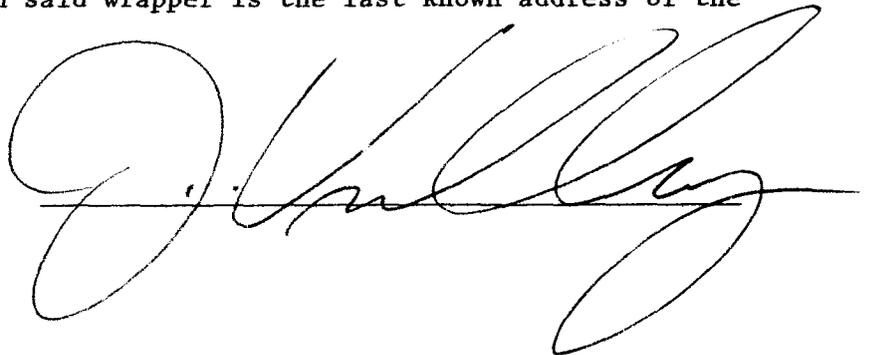
Lester J. Besen  
1133 Midland Ave.  
Bronxville, NY

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  
17th day of October, 1980.

Deborah A. Bank



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STATE TAX COMMISSION

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Lester J. Besen :  
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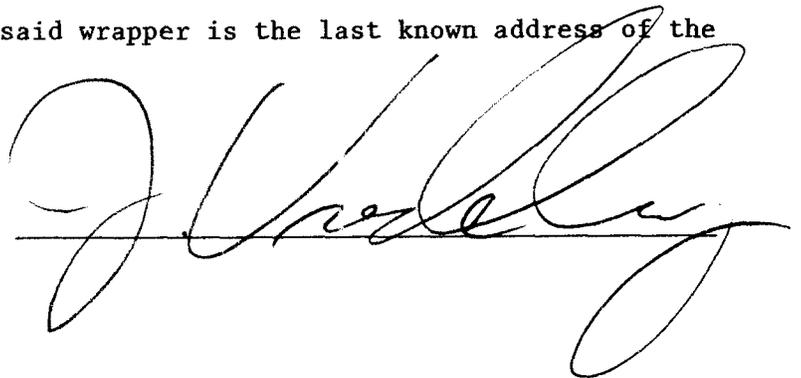
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17th day of October, 1980.

Ectorah A Bank



A large, stylized handwritten signature, likely of Jay Vredenburg, is written over a horizontal line.

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

October 17, 1980

Lester J. Besen  
1133 Midland Ave.  
Bronxville, NY

Dear Mr. Besen:

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 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  
Seymour Heinberg  
Escoe & Heinberg  
217 Broadway  
New York, NY 10007  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
LESTER J. BESEN : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Years :  
1969 and 1970. :

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Petitioner, Lester J. Besen, 1133 Midland Avenue, Bronxville, New York, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969 and 1970 (File No. 16423).

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 March 17, 1980 at 2:45 P.M. Petitioner appeared by Seymour Heinberg, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioner is properly entitled to an interest expense deduction during the years 1969 and 1970, for interest purportedly paid on money borrowed from his mother, Regina Besen.

II. Whether petitioner is properly entitled to deduct medical expenses he purportedly paid for nursing care services rendered to his mother, Regnia Besen, during the year 1970.

FINDINGS OF FACT

1. Petitioner, Lester J. Besen, timely filed New York State income tax resident returns for the years 1969 and 1970.

2. On January 29, 1973 the Audit Division issued a Statement of Audit Changes to petitioner wherein, as explained on a Schedule of Audit Adjustments attached thereto, interest deductions claimed for 1969 and 1970 of \$3,500.00 and \$2,400.00 respectively, were disallowed since "No evidence of amount paid or obligation therefor was presented." Additionally, a medical expense adjustment was made for the year 1970 of \$5,121.53. Said adjustment was computed since a "deduction claimed of \$5,530.00 for registered nurses was not substantiated." Accordingly, a Notice of Deficiency was issued against petitioner on January 29, 1973 asserting additional personal income tax of \$908.10, plus interest of \$117.68, for a total due of \$1,025.78.

3. The aforementioned interest expense adjustments were with respect to amounts petitioner contended were paid to his mother, Regino Besen, as interest in connection with money borrowed from her prior to the years at issue. Although petitioner contended that a promisory note was issued, neither the note nor the checks evidencing repayment were made available at the hearing. The only documentation submitted was a customer's credit advice dated January 5, 1968, from Manufacturer's Hanover Trust Company evidencing a loan by Regina Besen of \$20,000.00 of which petitioner contended that the funds were then loaned to him, and a copy of a check from the Ninth Federal Savings and Loan Association of New York, dated February 19, 1968, to petitioner in the amount of \$11,000.00, of which he contended such funds were drawn on the account of Regina Besen.

4. Petitioner, a medical doctor, contended that he borrowed money from his mother for the purpose of satisfying a judgment since he was unable to secure a loan through a lending institution.

5. Petitioner contended that his mother, Regina Besen, was incapacitated during the year 1970 and in need of constant medical attention. He contended

that during said year he paid for the services of two registered nurses, who provided such care for his mother on a full-time basis. Although the actual checks were not submitted, the check register and an affidavit from a physician attending Regina Besen, attesting to the services of both nurses, were submitted in support of petitioner's claim that payments were made to said nurses. No evidence was submitted to show that such payments were made from petitioner's funds.

6. Petitioner contended that he is entitled to deduct the medical expenses of \$5,530.00 paid for his mother's nursing care since, although she was not a dependent of his, he furnished more than one half of her total support through such payments, thereby qualifying her as his "medical dependent".

7. Review of Regina Besen's U.S. Individual Income Tax Return for the year 1970 disclosed that her adjusted gross income was \$4,171.99. Additionally, she received social security payments of \$1,296.00. These amounts, when added to the nontaxable portion of capital gains of \$937.50, yielded a total income available for her own support of \$6,405.49.

#### CONCLUSIONS OF LAW

A. That petitioner's interest expense deductions claimed for interest paid to his mother, Regina Besen, during the years 1969 and 1970, in the amounts of \$3,500.00 and \$2,400.00 respectively, are denied since petitioner has failed to sustain his burden of proof required under section 689(e) of the Tax Law, to show that such interest was in fact paid or that a bona fide debtor-creditor relationship existed between himself and his mother.

B. That the medical expense deduction of \$5,530.00 claimed for payments to registered nurses rendering care to petitioner's mother, Regina Besen, during 1970 is denied since she did not qualify as a "medical dependent" of petitioner, as he did not furnish more than one half of her support during

such year and it has not been shown that such payments were made from petitioner's funds.

C. That the petition of Lester J. Besen is denied and the Notice of Deficiency dated January 29, 1973 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 17 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER