

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Frederick S. & Dorothy F. Carey :
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 Year 1974. :

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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Frederick S. & Dorothy F. Carey, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frederick S. & Dorothy F. Carey
19 Homewood Ave.
Yonkers, NY 10701

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
7th day of July, 1980.

Suzanne A. Bank

Jay Vredenburg

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

July 7, 1980

Frederick S. & Dorothy F. Carey
19 Homewood Ave.
Yonkers, NY 10701

Dear Mr. & Mrs. Carey:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
FREDERICK S. CAREY and DOROTHY F. CAREY	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	

Petitioners, Frederick S. Carey and Dorothy F. Carey, 19 Homewood Avenue, Yonkers, New York 10701, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 16460).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 26, 1979 at 9:15 A.M. Petitioner, Frederick S. Carey, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioners can provide sufficient evidence to establish the deductions of "Employee Business Expenses", "Medical and Dental Expenses", "Sales Tax" and "Contributions".

FINDINGS OF FACT

1. Petitioners, Frederick S. Carey and Dorothy F. Carey, timely filed a New York State Combined Income Tax Return for the year 1974.

2. On June 28, 1976, the Audit Division issued a Notice of Deficiency in the sum of \$471.09, along with an explanatory Statement of Audit Changes, which itemized its determination as follows:

<u>ITEM</u>	<u>AMOUNT REPORTED ON RETURN</u>	<u>CORRECTED AMOUNT</u>	<u>ADJUSTMENT</u>
Employee Business Expenses	\$3,026.00	\$1,949.00	\$1,077.00
Medical Limitation			32.31
Contributions	815.00	470.00	345.00
Medical & Dental Expense	770.00	78.00	692.00
Capital Loss Carryover	(1,000.00)	(500.00)	500.00
Sales Tax	670.00	512.00	158.00
Sundry Tax	45.00	-0-	45.00
		TOTAL ADJUSTMENT	<u>\$2,849.31</u>

Petitioner conceded the adjustments to the Capital Loss Carryover and Sundry Tax items.

3. Petitioner Frederick S. Carey was an insurance salesman for the Royal-Globe Insurance Company, Ltd. during the year 1974, and earned \$40,123.71. This company reimbursed petitioner for all travel and most entertainment expenses. In addition, petitioner was employed as president of the Yonkers Municipal Civil Service Commission and earned \$5,363.81 during the year 1974. In this capacity, petitioner was not reimbursed for any expenses he may have incurred. Accordingly, petitioner claimed \$1,949.00 in auto expense, and \$1,077.00 in entertainment expenses as Employee Business Expenses. The entertainment expense of \$1,077.00 was disallowed in full by the Audit Division, which was challenged by petitioner.

4. In support of Employee Business Expenses claimed, petitioner submitted sixteen checks totaling \$277.85 as an amount representing "flowers to clients". In addition, he submitted:

- (a) a number of pages torn from a diary with amounts totalling \$390.40 for "Luncheons, Dinners, and Entertainment". The information contained on the diary pages was sparse and limited in content.
- (b) five checks payable to liquor stores totalling \$241.36 for "Home Entertainment". Attached thereto were pages torn from a diary listing names under the category of "House Party". Business purpose or business relationship was not indicated.

- (c) five checks totalling \$223.00 for "Professional Dues and Subscriptions".

5. Petitioner submitted no receipts, cancelled checks or other documentary evidence in support of his deduction for contributions.

6. Petitioner submitted cancelled checks for medical and dental expenses totalling \$1,773.52; and for medicines and drugs totalling \$413.28. Also submitted were:

- (a) a typed letter dated January 2, 1976 from a pharmacy certifying that petitioner purchased "prescription drugs, general medicines, drugs and medical supplies". This letter contained a handwritten figure of "\$605.00", which was not part of the typed narrative of the letter.
- (b) an "information bulletin" from the Royal-Globe Insurance Company, Ltd. indicating that petitioner was paying \$10.55 bi-weekly during 1974 for Blue Cross, Blue Shield and major medical coverage (\$274.30 annually).

Although petitioner was covered under Blue Cross, Blue Shield and major medical insurance, no information or documentary evidence was submitted indicating whether petitioner was reimbursed for all or part of the medical expenses incurred for the year 1974.

7. Petitioner submitted a variety of bills, checks and statements in support of his sales tax deduction. However (except for sales tax in the sum of \$20.78), the sales tax paid, if any, was not clearly ascertainable, or charged directly to petitioner. Petitioner had included account statements of contractors from a supplier. Apparently, these contractors rendered services to petitioner during the year 1974.

8. The Audit Division allowed a sales tax deduction of \$512.00, which was computed in accordance with tax tables provided by the United States Treasury Department.

CONCLUSIONS OF LAW

- A. That tax deductions and exemptions depend upon clear statutory provisions,

and the burden is upon the taxpayer to establish a right to them. (Matter of Grace v. New York State Tax Commission, 37 N.Y.2d 193; Matter of Central Office Alarm Co. v. State Tax Commission, 58 A.D.2d 162).

B. That the petition of Frederick S. Carey and Dorothy F. Carey is granted to the extent established by a fair preponderance of the evidence submitted; to wit, Professional Dues and Subscriptions of \$223.00, and medical insurance premiums of \$274.30.

C. That petitioners, Frederick S. Carey and Dorothy F. Carey, have failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, in establishing that they were entitled, within the purview of the Internal Revenue Code, and Article 22 of the Tax Law, to deductions greater than those granted by paragraph B of this decision.

D. That the Audit Division is hereby directed to modify the Notice of Deficiency issued June 28, 1976 in accordance with paragraph B of this decision; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
JUL 07 1980

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER