STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT E. DESMAREST

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) 1965

        :

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 23rd day of   July   , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert E. Desmarest

        (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Robert E. Desmarest
                            9 Bentley Lane
                            Stony Brook, New York   11790

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

23rd day of   July , 1973.

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY. N. Y. 12226
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ▬▬ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 23, 1973

Robert E. Desmarest
9 Bentley Lane
Stony Brook, New York 11790

Dear Mr. Desmarest:

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

Please take further notice that pursuant to
Section(s) **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.

Any 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.
These will be referred to the proper party for
reply.

Very truly yours,

Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT E. DESMAREST

for Redetermination of Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1965.

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:   DECISION
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Petitioner, Robert E. Desmarest, has filed a petition for

redetermination of deficiency or for refund of personal income

tax under Article 22 of the Tax Law for the year 1965. (File

No. 89988024). On May 4, 1973, petitioner, in writing, waived

a formal hearing and consented to the issuance of a decision by

the State Tax Commission based upon the entire record contained

in the file. The State Tax Commission renders the following

decision after due consideration of said record.

ISSUES

I. Was petitioner, Robert E. Desmarest, a resident individual

of New York State during the year 1965?

II. Did petitioner, Robert E. Desmarest, substantiate $1,881.00

in nonreimbursed employee business expenses for the year 1965?

FINDINGS OF FACT

1. Petitioner, Robert E. Desmarest, did not file a New York

State personal income tax return for the year 1965.

2. On July 29, 1968, the Income Tax Bureau issued a Statement

of Audit Changes against petitioner, Robert E. Desmarest, imposing

New York State personal income tax for the year 1965, in the sum of

$831.65 upon the grounds that he was a New York State resident

during said year. It also disallowed $1,881.00 in claimed nonreim-

bursed employee business expenses as unsubstantiated. It further

imposed a penalty pursuant to section 685(a) of the Tax Law in the sum of $207.91 for failure to file a New York State personal income tax return for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency against him in the sum of $1,153.75.

3. Petitioner, Robert E. Desmarest, filed a U.S. Individual Income Tax Return for the year 1965. He listed his address on said return as 9 Bentley Lane, Stony Brook, New York. He listed his 1964 address on said return as 157-11 Sanford Avenue, Flushing, New York. He failed to submit any documentary or other substantial evidence to prove that during the year 1965 he was not domiciled in New York State, did not maintain a permanent place of abode in New York State, and did maintain a permanent place of abode elsewhere. He also failed to submit any documentary or other substantial evidence to prove the number of days he spent within and without New York State during said year.

4. Petitioner, Robert E. Desmarest, on form 2106 "Statement of Employee Business Expenses" attached to his 1965 U.S. Individual Income Tax Return claimed a deduction for nonreimbursed business expenses in the sum of $1,881.00. He further claimed that he was away from home on business for 285 days during said year. He failed to submit any documentary or other substantial evidence to prove that he incurred $1,881.00 in nonreimbursed business expenses during said year.

CONCLUSIONS OF LAW

A. That petitioner, Robert E. Desmarest, was a resident individual of New York State during the year 1965 in accordance with the meaning and intent of section 605(a) of the Tax Law. Accordingly, his New York adjusted gross income for the year 1965 was equal to his Federal adjusted gross income for said year in accordance with the meaning and intent of section 612(a) of the Tax Law.
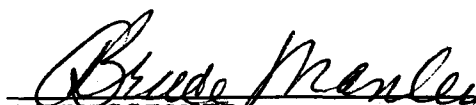
B.   That petitioner, Robert E. Desmarest, failed to substantiate $1,881.00 in alleged nonreimbursed employee business expenses for the year 1965, since he did not submit any documentary or other sufficient evidence to support his claim and accordingly said deduction was properly disallowed.
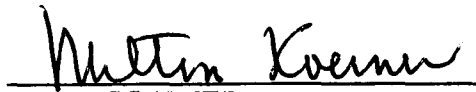
C.   That the petition of Robert E. Desmarest is denied and the Notice of Deficiency issued July 29, 1968, is sustained.

DATED: Albany, New York
         July 23, 1973

STATE TAX COMMISSION

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COMMISSIONER

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COMMISSIONER

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COMMISSIONER