

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP R. MEHLER

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(§)~~ 22 of the
Tax Law for the Year ~~(§)~~ 1965

State of New York
County of Albany

JANET MACK

, 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 22nd day of May, 1975, she served the within

Notice of Decision ~~(or Determination)~~ by (certified) mail upon Philip R. Mehler

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Philip R. Mehler

54 Birchall Drive

Scarsdale, New York 10583

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.

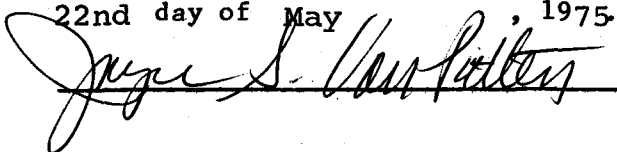
That deponent further says that the said addressee is the ~~(representative)~~

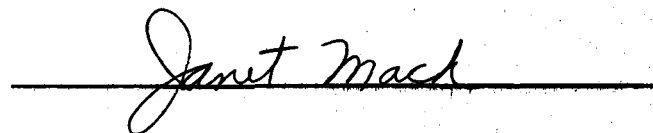
~~(or)~~ petitioner herein and that the address set forth on said wrapper is the last

known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

22nd day of May, 1975





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP R. MEHLER

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article (x) 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

JANET MACK

, 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 22nd day of May , 1975, she served the within

Notice of Decision (~~xx-DETERMINATION~~) by (certified) mail upon Gregory McMahon, Sr.

and Gregory McMahon, Jr. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Gregory McMahon, Sr. and

Gregory McMahon, Jr., C.P.A.'S

60 East 42nd Street

New York, New York 10036

and by depositing same enclosed in a postpaid properly addressed wrapper in a

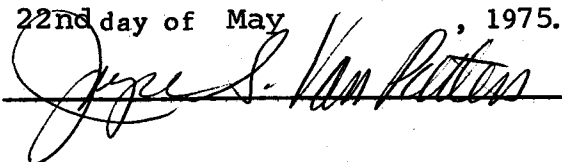
(post office or official depository) under the exclusive care and custody of

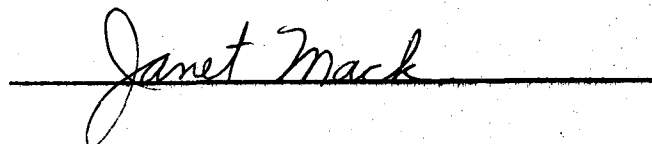
the United States Post Office Department within the State of New York.

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

22nd day of May , 1975.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

~~James H. Tully, Jr.~~
~~NARCISO BROCCACCINO, PRESIDENT~~
A. BRUCE MANLEY
MILTON KOERNER

DATED: Albany, New York
May 22, 1975

Mr. Philip R. Mehler
54 Birchall Drive
Scarsdale, New York 10583

Dear Mr. Mehler:

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,


Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PHILIP R. MEHLER : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1965. :

Philip R. Mehler, 54 Birchall Drive, Scarsdale, New York 10583, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the year 1965.

Said deficiency was asserted by notice dated April 29, 1968, under File No. 36893545 and is in the amount of \$349.60 plus interest of \$42.76 for a total of \$392.36.

A hearing was duly held on May 20, 1974, and December 20, 1974, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Gregory McMahon, Sr., C.P.A. and Gregory McMahon, Jr., C.P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq. and Alexander Weiss, Esq.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is the allowance of certain business deductions.

FINDINGS OF FACT

1. Mr. Mehler is a real estate broker. He is employed by Cross & Brown Company, 522 Fifth Avenue, New York, New York. He has also held the title of Vice-President of that company. Mr. Mehler shares commissions fifty-fifty with the company. Their commissions range from \$3,000 to \$25,000 on each transaction. Each transaction involves commercial property and requires much effort over a long period to bring to consummation.

2. Mr. Mehler had commission income during 1965 of over \$40,000. He deducted expenses of \$7,266.61. In later years his income has tripled and his expenses have doubled. His employer does not reimburse expenses.

3. On audit, the following expenses reported on his return were allowed in full:

lunches and dinners with customers	\$1,906.09
cab fares	1,222.00
outside phone calls	165.00
real estate board fees	85.00
financial advice	150.00
safe deposit box	<u>17.50</u>

\$3,545.59

In addition, travel expenses claimed of \$825.00 were allowed to the extent of \$225.00.

4. The items disallowed on audit were as follows:

travel expenses to the extent	\$ 600.00
"promotional" expense	1,528.74
Yale Club entertainment	574.36
auto expenses	792.92

5. Mr. Mehler kept a diary of his daily expenses. The diary was the basis of the figures reported on his tax return and also the basis of a summary prepared by his accountant for use during the audit under review. The diary was given to a tax examiner and is apparently the basis on which the examiner allowed the expenses which he did allow. That examiner retired and the new examiner on the audit could not find the diary.

6. The auto expenses in contest were computed at 40% of \$1,982.30 which is the total of amounts paid for insurance of \$288.80, garage and washing of \$396.00, gas and oil of \$480.00 and depreciation of \$817.50.

Mr. Mehler owned a 1962 Buick Skylark. He estimates he traveled from 15,000 to 17,000 miles each year. His business involved travel with prospective clients both in New York City and in the suburbs. He kept the car garaged on East 55 Street which was between his place of business near 44th Street and his home on 73 Street.

7. The amounts paid to the Yale Club totaled \$584.26 according to the summary in evidence. These were almost entirely for food and drinks with an occasional guest fee.

8. The promotional expenses disallowed, although reported as a separate item on the return, appears on the petitioner's summary as part of the total of \$3,434.83 of which \$1,906.09 was allowed as expenses for lunches and dinners. The entire amount includes not only lunches and dinners but also a portion of entertainment charges at tennis clubs, gifts and part of the expense of cocktail parties given at home.

The petitioner did produce various receipts for gifts totaling \$356.83 out of the \$425.00 gifts "and miscellaneous" claimed on accounts he kept with Tiffany & Company, Fifth Avenue.

Most of the entertainment expenses were charges on credit cards or on open accounts at well-known restaurants.

9. The travel expense claimed on the return is supported by the diary and by evidence, especially of trips to Puerto Rico with clients.

CONCLUSIONS OF LAW

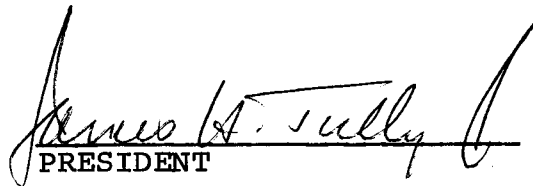
In view of the loss of the diary, the petitioner has done all that could be expected of him in supporting his deductions. It is particularly noted that the automobile expenses and gifts were almost entirely supported both as to amount and reasonableness.

The inference must be made that all his expenses are similarly supportable.

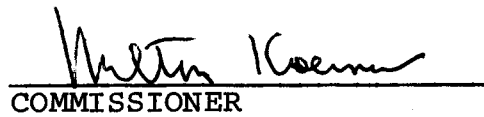
The deficiency is cancelled.

DATED: Albany, New York
May 22, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER