

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAKOB MICHAEL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1965 and 1966.

State of New York
County of Albany

Bruce Batchelor, 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 8th day of December, 1976, she served the within
Notice of Decision by (certified) mail upon Peter J.

Zelmanow, Esq. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Peter J. Zelmanow, Esq.
Louis Sternbach & Company
6 East 43rd Street
New York, New York 10017

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 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

8th day of December, 1976.

Bruce Batchelor

Janet Back

STATE OF NEW YORK
STATE TAX COMMISSION

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For a Redetermination of a Deficiency or :
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of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) or Period(s) :
1965 and 1966.

State of New York
County of Albany

Bruce Batchelor , 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 8th day of December , 1976 , she served the within
Notice of Decision by (certified) mail upon Jakob
Michael ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Jakob Michael
211 Central Park West
New York, New York
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 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

8th day of December , 1976.

Bruce Batchelor

Jane Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

December 8, 1976

TELEPHONE: (518) **457-3850**

Mr. Jakob Michael
211 Central Park West
New York, New York

Dear Mr. Michael:

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

Please take further notice that pursuant to
Section(2) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

PAUL B. COBURN
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| JAKOB MICHAEL | : | DECISION |
| for Redetermination of a Deficiency or | : | |
| for Refund of Personal Income Tax under | : | |
| Article 22 of the Tax Law for the Years | : | |
| 1965 and 1966. | : | |

Petitioner, Jakob Michael, residing at 211 Central Park West, New York, New York, has 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 1965 and 1966. (File No. 01334).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 17, 1976, at 1:30 P.M. Petitioner appeared by Peter J. Zelmanow, Certified Public Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq., of counsel).

ISSUE

Whether petitioner, Jakob Michael, properly deducted home office expenses during the years 1965 and 1966.

FINDINGS OF FACT

1. Petitioner, Jakob Michael, timely filed New York State resident income tax returns for the years 1965 and 1966.

2. On November 25, 1968 and April 13, 1970, the Income Tax Bureau issued statements of audit changes against petitioner, Jakob Michael, disallowing deductions for home office expenses as well as other items not in issue. In accordance with the aforesaid statements of audit changes, it issued notices of deficiencies of \$438.60 and \$363.13, respectively.

3. Petitioner, Jakob Michael, was President of Standard Industries during the years 1965 and 1966. Petitioner, also worked for two other corporations in 1966. During the years in controversy, petitioner worked exclusively in his home office. Because of petitioner, Jakob Michael's advanced age and poor physical condition, his physician gave him specific instructions not to work more than a few hours a day away from his home.

4. In order to retain petitioner, Jakob Michael, as its President and benefit from his expertise and experience, Standard Industries set up an office in his apartment. Standard Industries provided petitioner with two full-time secretaries who worked exclusively in his home, as well as desks, filing cabinets, photocopy machines and other office equipment.

5. Petitioner, Jakob Michael, spent an inordinate amount of time in his home office supervising and directing various corporate activities for Standard Industries. He conducted conferences, reviewed stockholder reports, analyzed personnel requirements and engaged in a myriad of other corporate duties. The few hours daily, petitioner, Jakob Michael's, physician permitted him to work away from home would not have been sufficient to enable petitioner to perform even a modicum of the aforesaid activities.

6. Petitioner, Jakob Michael's apartment had ten rooms, three of which were used exclusively for business purposes. During each year in question, petitioner deducted three-tenths of his annual rental expense of \$10,260.00 as a home office expense.

CONCLUSIONS OF LAW

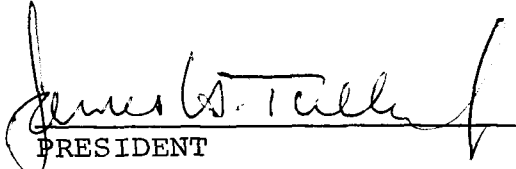
A. That because of petitioner, Jakob Michael's physical condition, extensive workload and business experience, it was necessary for petitioner to use and incumbent on Standard Industries to provide as a "condition of his employment", a home office for the performance of his "ordinary and necessary" business activities. Therefore, petitioner's deductions for home office expenses were

proper within the meaning and intent of section 162(a) of the Internal Revenue Code. (Rev. Ruling 62-180, 1962-2 CB 52, see more lenient "appropriate and helpful" standard, Newi v. Commissioner, 432 F 2d 998).

B. That the petition of Jakob Michael is granted and the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued November 25, 1968 and April 13, 1970.

DATED: Albany, New York
December 8, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER