

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT W. AND VILMA E. WOLF :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (x) 22 of the :  
Tax Law for the Year (xxxxxx) 1972.:  
(xxxxxx)

State of New York  
County of Albany

Carmen Mottolese , 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 27th day of September , 1976 , she served the within  
Notice of Decision by (certified) mail upon Robert W. and  
Vilma E. Wolf (xxxxxx) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. & Mrs. Robert W. Wolf  
146 Main Street  
Whitehall, New York 12887  
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 (xxxxxx)  
(xxxxxx) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (xxxxxx) petitioner.

Sworn to before me this

27th day of September , 1976.

Carmen Mottolese

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

September 27, 1976

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

Mr. & Mrs. Robert W. Wolf  
146 Main Street  
Whitehall, New York 12887

Dear Mr. & Mrs. Wolf:

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

Please take further notice that pursuant to  
Section(X) **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,  
*Frank J. Puccia*

Frank J. Puccia  
Supervisor of Small  
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
ROBERT W. AND VILMA E. WOLF	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1972.	:	

---

Petitioners, Robert W. and Vilma E. Wolf, 146 Main Street, Whitehall, New York 12887, filed a petition for redetermination of a deficiency or for revund of personal income tax under Article 22 of the Tax Law for 1972. (File No. 14506795). A small claims hearing was held before Harry Huebsch, Hearing Officer, on June 17, 1976 at 1:15 P.M. at the offices of the State Tax Commission, Room 107, Building # 9, State Campus, Albany, New York. Petitioner, Robert W. Wolf, appeared pro se and for his wife. The Income Tax Bureau appeared by Peter J. Crotty, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Whether or not automobile expenses were a substantiated and a proper deduction.

FINDINGS OF FACT

1. Petitioners, Robert W. and Vilma E. Wolf, timely filed a joint resident 1972 return in which automobile expenses were claimed in the amount of \$2,025.00. On audit, the Income Tax Bureau held that a taxpayer is not allowed a deduction for automobile expenses on the mere fact that he incidentally takes care of rental property on trips away from his business headquarters to his family residence. However, the Income Tax Bureau allowed twelve trips for the purpose of maintaining said rental property. Of the \$2,025.00 claimed, \$1,506.60 was disallowed and a Notice of Deficiency dated July 19, 1974 was issued in the amount of \$116.67 additional tax and \$10.53 interest for a total of \$127.30.

2. Petitioner, Robert W. Wolf, worked weekdays as an iron worker in Newburgh, New York. He stayed in Newburgh in a rented, furnished room during the week. On weekends he went to his home in Whitehall, New York, a distance of approximately one hundred seventy-five miles.

3. Petitioner, Robert W. Wolf, owned two rental income properties in Whitehall. One unit consisted of an office or store and three apartments. Across the street from this unit, the other property consisted of an office and five apartments. Petitioners, Robert W. and Vilma E. Wolf, and their five children lived in one of these apartments. The rental properties resulted in a loss of \$3,857.00 for 1972.

4. During the weekends, and also Wednesdays in the summertime, petitioner, Robert W. Wolf, attended to the rental properties. He cleared snow, put out garbage, mowed grass, made repairs and renovations. The furnace in the larger unit required shoveling of coal each week. Rents were paid in partial amounts thus requiring constant collection. Petitioner, Vilma E. Wolf, was disabled during 1972 and was unable to assist her husband.

CONCLUSIONS OF LAW

A. That the travel expense allowed by the Income Tax Bureau was reasonable for maintaining the Whitehall properties.

B. That petitioner, Robert W. Wolf, has not carried the burden of proof as required by section 689(e) of the Tax Law that the reason for the travel was primarily to maintain his properties and not for the personal purpose of being with his family.

C. That the weekend trips were normal commuting expenses between petitioner, Robert W. Wolf's home to his only source of income which was his tax home in Newburgh and back home again. The trips were commuting expenses and, as such, are not deductible under Section 162 of the Internal Revenue Code.

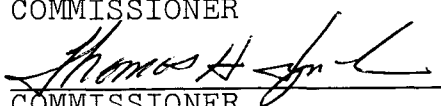
D. That the petition of Robert W. and Vilma E. Wolf is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York  
September 27, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER