

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE & ANN A. DESSYLAS

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)~~ 1972.:

State of New York
County of Albany

Bruce Batchelor , 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 14th day of January , 1977, he served the within
Notice of Decision by (certified) mail upon George & Ann A.
Dessylas (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. George Dessylas
87-10 149th Avenue
Howard Beach, New York 11414

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)~~
~~XXXXX~~ 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

14th day of January , 1977.

Bruce Batchelor

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

January 14, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. George Dessylas
87-10 149th Avenue
Howard Beach, New York 11414

Dear Mr. & Mrs. Dessylas:

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: ~~Director of Tax Administration~~

Taxing Bureau's Representative:

III. Were travel expenses of \$852 claimed with respect to a trip to California deductible as educational expenses?

IV. Were expenses incurred by petitioner, George Dessylas, in performing the duties of his second job deductible even though he failed to claim such deductions on his 1972 Federal and New York returns?

FINDINGS OF FACT

1. Petitioners, George and Ann A. Dessylas, timely filed a resident 1972 New York State income tax return on Form IT-208. Petitioners claimed deductions thereon for contributions of \$850 and miscellaneous deductions which included a deduction for expenses of maintaining an office in home of \$894.65 and for travel expense of \$852 in connection with a trip to the West Coast.

2. On May 19, 1975, the Income Tax Bureau issued a Statement of Audit Changes showing the disallowance of contributions in the amount of \$250 as unsubstantiated as well as the disallowance of the expenses claimed for office in home and travel expenses for a trip to the West Coast on the basis that these later two expenses were not ordinary and necessary expenses and such expenses were not required by the employer of George Dessylas. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$193.86 plus interest.

3. Petitioner, George Dessylas, indicated that a deduction should also be allowed for the year 1972 for ordinary and necessary expenses of \$773.08 incurred in connection with his

second job as head wrestling coach for Uniondale High School which he failed to claim on his 1972 Federal or New York State returns. In addition, he did not file an amended Federal return with respect thereto.

4. In support of the disallowed charitable deduction of \$250, petitioners presented a photocopy of a letter from Father Nicholas J. Magoulias of Saint Paul's Greek Orthodox Church indicating that petitioners contributed \$250 to such church in 1972.

5. Petitioner, George Dessylas, asserted that as a guidance counselor, it was necessary for him to maintain an office in his home to prepare reports, notes, speeches, etc. which he was unable to prepare or complete during his regular working hours due to his work load and which he could not complete at the school after school hours as the school was closed at night.

6. Petitioner stated that the expenses for the trip to the West Coast were incurred so he could visit and evaluate schools in the Los Angeles and San Francisco area and thereby render more meaningful guidance to his students in their selection of colleges. Petitioner contended that such expenses were directly related to his duties as a guidance counselor and that the major position of his activities during the trip were of such a nature so as to directly maintain and improve his skills. In support of this contention, petitioner submitted photocopies of pages purported to be from his day-by-day diary

for the period from June 24, 1972 through July 8, 1972 indicating information regarding the schools visited during such period.

7. Petitioner was not required as a condition of his employment to maintain an office in home and he was not required by his employer to take a trip to the West Coast to visit colleges in the area of Log Angeles and San Francisco.

CONCLUSIONS OF LAW

A. That petitioners are considered to have substantiated contributions claimed for the taxable year 1972.

B. That petitioner, George Dessylas, has not shown that the duties he performed at the office in his home could not have been performed during his regular working hours at the office provided by his employer. Therefore, the expenses claimed with respect to the office maintained in petitioner's home are not considered to be deductible as ordinary and necessary expenses incurred in connection with the production of income.

C. That petitioner has failed to show that his trip to the West Coast was directly related to his duties as a guidance counselor or that the major portion of his travel activities were of a nature which directly maintained or improved his skills. Therefore, the expenses claimed in this respect were properly disallowed.

D. That in order for petitioner to be allowed a deduction with respect to expense incurred in connection with a second job such expenses would have had to have been reported for Federal income tax purposes in determining his Federal adjusted

gross income or his Federal itemized deductions (as the case may be) as Federal adjusted gross income is the starting point in determining New York adjusted gross income and Federal itemized deductions are the starting point in determining the New York itemized deduction. Therefore, since petitioners did not claim such expenses for 1972 Federal income tax purposes, a deduction for such expenses may not be allowed for 1972 New York State income tax purposes.

E. That the petition of George and Ann A. Dessylas is granted to the extent of allowing disallowed contributions of \$250 and of reducing additional personal income tax due from \$193.86 to \$173.36, together with such interest as may be lawfully due; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued May 19, 1975, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
January 14, 1977

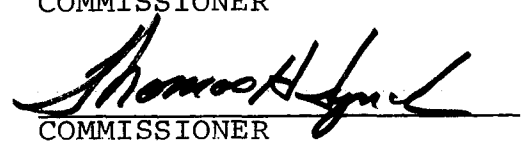
STATE TAX COMMISSION



RESIDENT



COMMISSIONER



COMMISSIONER