

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR J. KRAKOWER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(ss)~~ 22 of the
Tax Law for the Year ~~(ss) or Period (ss)~~ 1971.:

State of New York
County of Albany

Marsina Donnini, 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 22 day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Arthur J. Krakower

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. Arthur J. Krakower
32 Reservoir Road
Atherton, California 94025

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)~~
~~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

22 day of August, 1977

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 22, 1977

Mr. Arthur J. Krakower
32 Reservoir Road
Atherton, California 94025

Dear Mr. Krakower:

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

You have now exhausted your right of review at the administrative level. Pursuant to section (e) **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Joseph Chyrywaty
Hearing Examiner

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ARTHUR J. KRAKOWER :
for Redetermination of Deficiency :
or for Refund of Personal Income :
Taxes under Article 22 of the Tax :
Law for the Year 1971. :

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 29, 1976 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

I. Were expenses incurred for the purpose of seeking new employment by petitioner, Arthur J. Krakower, during 1971, allowable deductions?

II. Did the petitioner, Arthur J. Krakower, substantiate the miscellaneous deductions and the employee business expenses claimed on his income tax return for the year 1971?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Arthur J. Krakower, timely filed a separate 1971 New York State resident income tax return on Form IT-208 which he filed with his wife. He claimed deductions for employee business expenses of \$2,288.00 and miscellaneous deductions of \$7,146.00 which included a deduction for job-hunting expenses of \$3,630.00.

2. On July 17, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner showing (a) the disallowance of the employee business expenses of \$2,288.00 on the grounds that petitioner was not required by his employer to incur said expenses, (b) the disallowance of the job-hunting expenses of \$3,630.00 on the grounds that the expenses were not deductible, (c) the allowance of a miscellaneous deduction of \$1,124.00 of the amount claimed on the basis of the documentary evidence submitted and (d) an adjustment to medical expense due to the disallowance of employee business expenses.

3. Petitioner contended that the deduction for employee business expenses of \$2,288.00 constituted expenses which he

incurred with respect to the business use of his automobile. Petitioner further contended that the miscellaneous deduction claimed included investment expense of \$161.00, tax preparation expense of \$200.00, safety deposit box charges of \$17.00, business publication costs of \$24.00, expenses incurred in search of employment of \$3,630.00, bicycle theft of \$50.00 and other business expenses of \$3,064.00.

4. The \$3,630.00 deduction claimed for expenses incurred in search of employment included advertising expense of \$59.00, telephone and answering service charges of \$1,449.00, other expenses incurred from July 18, 1971 through December 1, 1971 of \$1,084.00 and unreimbursed air travel expense of \$1,038.00. The petitioner contended that the latter amount constituted his unreimbursed cost of various trips he made during 1971 in search of employment, including trips to California, in April, to Atlanta, Georgia and Birmingham, Alabama in September, to St. Louis and Milwaukee in September, to Washington, D.C. in November and to California and Minneapolis from November 29 through December 10, 1971. The petitioner contended that the deduction for other business expenses of \$3,064.00 included "appreciation office expense" of \$20.00, office in home expense of \$250.00, office supplies of \$37.00, business meals of \$1,253.00,

advertising for job of \$209.00, travel for job of \$1,619.00, gifts of \$174.00 and entertainment expense of \$506.00, less reimbursement of \$1,004.00.

5. That the petitioner, Arthur J. Krakower, failed to submit sufficient documentary or other substantial evidence to show that the expenses claimed with respect to seeking new employment were incurred primarily for said purpose or that any of the expenses were other than of a personal nature. Therefore, the expenses claimed with respect to seeking new employment are not allowable as business expenses under section 162 of the Internal Revenue Code or as expenses for the production of income under section 212 of the Internal Revenue Code.

6. That the petitioner failed to submit sufficient documentary or other evidence to substantiate the amount claimed for employee business expenses of \$2,288.00 or a deduction in excess of the amount allowed by the Income Tax Bureau as a deduction for miscellaneous deductions of \$1,124.00, and therefore, he has not sustained the burden of proof required in accordance with the meaning and intent of section 689(e) of the Tax Law.

7. That the petition of Arthur J. Krakower is denied and the Notice of Deficiency issued October 29, 1973 in the sum of \$1,220.02 is sustained together with such additional interest as may be legally owing.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER