

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
AARON SCHWINGER

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 (~~or any Period(s)~~) 1969. :

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 8th day of April , 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Aaron Schwinger

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Aaron Schwinger  
35 Temple Place  
Passaic, New Jersey

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 April , 1977.

Bruce Batchelor

Janet 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

April 8, 1977

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

Mr. Aaron Schwinger  
35 Temple Place  
Passaic, New Jersey

Dear Mr. Schwinger:

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

Please take further notice that pursuant to  
Section(§) **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**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
AARON SCHWINGER	:	
for Redetermination of a Deficiency or	:	DECISION
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1969.	:	

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Petitioner, Aaron Schwinger, residing at 35 Temple Place, Passaic, New Jersey, has filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1969 (TAB #1181).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on October 25, 1976, at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

ISSUE

Whether the petitioner, Aaron Schwinger, a nonresident partner, can allocate his income received from the New York State partnership "Schwinger, Simon and Company."

FINDINGS OF FACT

1. The partnership of Schwinger, Simon and Company is engaged in the practice of accounting. During the year 1969, the firm

consisted of three partners of which two were nonresidents. The petitioner, Aaron Schwinger, was a nonresident partner of said firm.

2. Petitioner, Aaron Schwinger, filed a New York State nonresident income tax return for the year 1969. On said return, he allocated his distributive share of income received from said partnership.

3. On March 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Aaron Schwinger, disallowing the allocation claimed on the grounds that the partnership return did not allocate income and therefore petitioner may not allocate his share of ordinary income. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$837.41.

4. The original 1969 New York State partnership return of Schwinger, Simon and Company dated April 14, 1970 listed only one partnership office located at 277 Broadway, New York City and no allocation of income was claimed on such return. Petitioner, Aaron Schwinger, asserted that the original partnership return did not properly reflect his share of partnership income for 1969 based upon the partnership books as the partnership had another bona fide office located outside New York State. Petitioner submitted an amended 1969 New York State partnership return for Schwinger, Simon and Company dated October 25, 1976 on which an allocation of income was claimed on the basis of such other office maintained at 15 Sinclair Drive, Wayne, New Jersey. This Wayne, New Jersey address was the home address of petitioner, Aaron Schwinger. None of the member partners were certified in the State of New Jersey.

CONCLUSIONS OF LAW

A. That the partnership of Schwinger, Simon and Company was not entitled to an allocation of income both within and without New York State during 1969 because it never maintained a regular place of business outside New York State during said year. Therefore, the petitioner, Aaron Schwinger, was not entitled to an allocation of his distributive share of partnership income received from Schwinger, Simon and Company for the year 1969. His home in New Jersey did not constitute a regular place of business of the partnership.

C. That the petition of Aaron Schwinger is denied and the Notice of Deficiency dated April 13, 1973 is sustained.

DATED: Albany, New York  
April 8, 1977

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

AARON SCHWINGER

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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) 1969 :

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 12th day of May , 1977, she served the within  
Notice of Decision by (certified) mail upon Aaron Schwinger

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Aaron Schwinger  
21 Garfield Avenue  
Clifton, NJ 07012

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

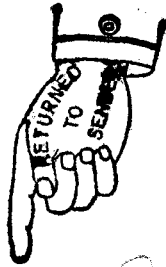
12th day of May , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N. Y. 12227



**Unclaimed**

Mr. Aaron Schwinger  
35 Temple Place  
Passaic, New Jersey

APR 11 1977

NAME \_\_\_\_\_

1st Notice \_\_\_\_\_

2nd Notice APR 20 1977

Return \_\_\_\_\_

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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
AARON SCHWINGER

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 (~~xxxxxx~~) 1969.:  
~~xxxxxx~~

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 7th day of June, 1977, she served the within  
Notice of Decision by (~~certified~~) mail upon Aaron Schwinger

(~~representative of the~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Aaron Schwinger  
21 Garfield Avenue  
Clifton, NJ 07012

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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That deponent further says that the said addressee is the (~~representative of the~~  
~~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

7th day of June, 1977.

Bruce Batchelor

Janet Mack



TA-26 (4-76) 25M

# SMALL CLAIMS

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

*[Handwritten signature]*  
Unlabeled  
Address  
Insurance  
No. 1000  
Do not return to sender  
Moved, last address

Mr. Aaron Schwinger  
21 Garfield Avenue  
Clifton, NJ 07012

*[Handwritten signature]*  
5/19  
5/29