

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JULIAN and JOSEPHINE VON DER LANCKEN

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.:

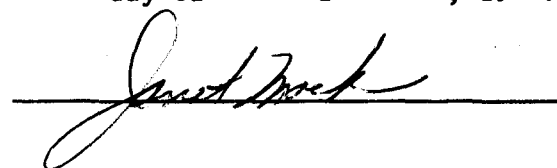
State of New York
County of Albany

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 29 day of July, 19 77, she served the within Notice of Decision by (certified) mail upon Julian (deceased) and Josephine Von Der Lancken ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Julian Von Der Lancken (deceased) & Josephine Von Der Lancken 575 Easton Avenue Somerset, New Jersey 08873 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)~~ ~~(representative of)~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of)~~ ~~(representative of)~~ petitioner.

Sworn to before me this
29 day of July, 1977.


Marsina Donnini



STATE OF NEW YORK
STATE TAX COMMISSION

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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

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 29 day of July, 1977, she served the within Notice of Decision by (certified) mail upon Abraham B. Cohen, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Abraham B. Cohen, CPA
19 West 44th Street
New York, New York 10036

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

29 day of July, 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

July 29, 1977

**Julian Von Der Lancken (deceased) &
Josephine Von Der Lancken
575 Easton Avenue
Somerset, New Jersey 08873**

Dear Mrs. Von Der Lancken:

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 ~~(7)~~ **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: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JULIAN and JOSEPHINE VON DER LANCKEN
for Redetermination of a Deficiency or
for Refund of Personal Income Taxes
under Article 22 of the Tax Law for the
Year 1972.

DECISION

Petitioners, Julian and Josephine Von Der Lancken, residing at 575 Easton Avenue, Somerset, New Jersey 08873, have 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 1972. (File No. 12457).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on November 15, 1976 at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioners appeared by Abraham B. Cohen, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

ISSUE

Whether business expenses claimed in the amount of \$9,296.00 are properly deductible for the year 1972.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioners, Julian Von Der Lancken (deceased 5-18-76) and Josephine Von Der Lancken, his wife, filed a New York State income tax resident return for the year 1972, on which net business income of \$23,877.00 was reported. This amount was represented on a Federal schedule "C" as gross income of \$33,173.00, minus business expenses of \$9,296.00.

2. Upon audit, the Income Tax Bureau issued a deficiency based on the following adjustments:

<u>Item</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Adjustment</u>
Salary and Fees	\$23,877.00	\$33,173.00	\$9,296.00
Business Expense	- 0 -	1,427.00	(1,427.00)
Medical Expense	379.00	150.00	<u>229.00</u>
Total Adjustments			\$8,098.00

Since petitioner was actually an employee, the Income Tax Bureau held his gross income of \$33,173.00 as wage income, and allowed business expenses of \$1,427.00 as an itemized deduction. In addition, a medical expense adjustment resulted from the increased adjusted gross income which increased the three-percent medical limitation, and eliminated all but \$150.00 of the medical expense deduction.

3. Petitioner, Julian Von Der Lancken, was employed as an interior designer and architect by the firm of Kahn and Jacobs, during the year 1972.

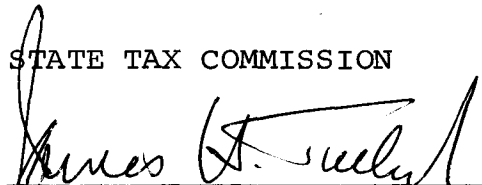
4. It was asserted that in the conduct of his duties as an employee, petitioner was required to incur business expenses that were not reimbursed by his employer. However, no evidence was submitted or shown to verify this contention.

5. That the petitioners have not sustained the burden of proof of establishing that the business expenses claimed were incurred; that the business expenses claimed were ordinary and necessary in the conduct of his occupation; and that the business expenses claimed were not reimbursed by his employer, in accordance with the meaning and intent of section 162 and section 274 of the Internal Revenue Code, and Article 22 of the Tax Law.

6. That the petition of Julian and Josephine Von Der Lancken is denied and the Notice of Deficiency issued June 30, 1975 in the amount of \$1,254.00 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York
July 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER