

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD and JOAN C. BARON

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 (x) or Period (x) 1971. :

State of New York  
County of Albany

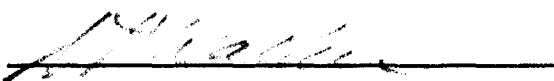
John Huhn , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 20th day of September , 19 78 , she served the within  
Notice of Decision by (certified) mail upon Howard and Joan C.  
Baron (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Howard and Joan C. Baron  
538 Churchill Road  
West Englewood, New Jersey

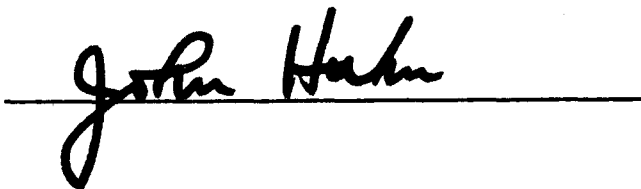
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

20th day of September , 19 78





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD and JOAN C. BARON

AFFIDAVIT OF MAILING

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

State of New York  
County of Albany

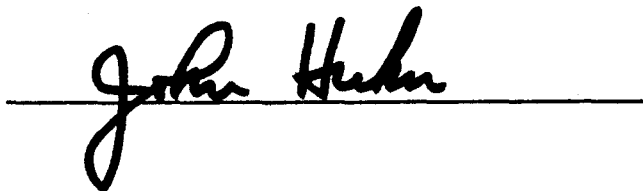
John Huhn , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 20th day of September , 19 78, she served the within  
Notice of Decision by (certified) mail upon Paul Friedman  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Paul Friedman  
1450 Broadway  
New York, New York 10018  
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

20th day of September , 1978.







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

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

September 20, 1978

Mr. and Mrs. Howard Baron  
538 Churchill Road  
West Englewood, New Jersey

Dear Mr. and Mrs. Baron:

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(s) 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

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In the Matter of the Petition	:	
of	:	
HOWARD and JOAN C. BARON	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1971.	:	

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Petitioners, Howard and Joan C. Baron, 538 Churchill Road, West Englewood (Teaneck), New Jersey, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No.00605).

A small claims hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 27, 1976 at 9:15 A.M. Petitioners appeared by Paul Friedman, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (James Scott, Esq., of counsel).

ISSUE

Whether petitioner Joan C. Baron was subject to personal income tax on salary income she received during 1971 for services performed outside New York State.

FINDINGS OF FACT

1. On December 23, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioners in the amount of \$1,166.90, plus interest of \$188.23, for a total of \$1,355.13. This Notice was issued on the grounds that salary income of \$5,200.00 received by petitioner Joan C. Baron during 1971 was subject to New York State income tax and that a loss of \$3,135.00 claimed with respect to her photography business was not deductible for New York State income tax purposes, as the business was not conducted from an office located within New York State.

2. Petitioners conceded at the hearing that the loss pertaining to the photography business was not deductible and that it was properly disallowed by the Income Tax Bureau.

3. During the entire year 1971, petitioner Joan C. Baron resided at 538 Churchill Road, West Englewood, New Jersey.

4. Petitioners timely filed a New York State income tax non-resident return on form IT-203, on which petitioner Joan C. Baron omitted from New York income the salary income of \$5,200.00 which she received from her employer/husband.

5. Petitioner Joan C. Baron was employed by her husband Howard Baron, M.D., two or three days each week, for which she was paid a salary of \$100.00 per week in 1971, for a total of \$5,200.00.

Her work involved typing correspondence and invoices, scheduling appointments, some researching in medical reference books, general filing, billing, bookkeeping and any other duties usually delegated to a medical secretary.

6. Dr. Baron's practice was limited to New York State. During 1971, his consultation office was located at 870 Fifth Avenue, New York, New York, where he rented space on two afternoons a week from 2 P.M. to 8 P.M. from another doctor at the rate of \$400.00 per month. The premises consisted of waiting rooms, examination rooms and office space, but Dr. Baron was limited to the use of a small consultation room without a desk (but with a slab-type table), two examination rooms and a waiting room.

7. Prior to 1971, Dr. Baron was associated with Jewish Memorial Hospital where he had the use of a nurse and three secretaries, as well as other facilities.

8. All of the work that petitioner Joan C. Baron performed for her employer/husband in 1971 was performed at her home in New Jersey. However, the Income Tax Bureau contended that said work was not of a nature that required it to be done there exclusively and, therefore, all of her salary income was taxable for New York State income tax purposes.

CONCLUSIONS OF LAW

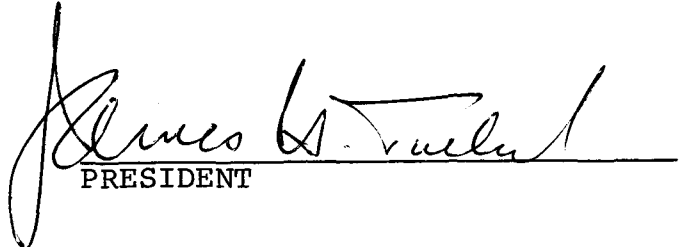
A. That the work performed by petitioner Joan C. Baron for her employer/husband at her home in New Jersey constitutes personal services rendered by a nonresident individual wholly without New York State; therefore, her salary income is not subject to New York State personal income tax in accordance with 20 NYCRR 131.4(b).

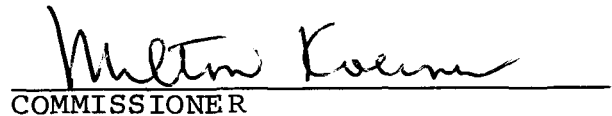
B. That the petition of Howard and Joan C. Baron is granted to the extent of reducing petitioners' New York taxable income to \$34,919.00; that the Income Tax Bureau is directed to accordingly modify the Notice of Deficiency issued December 23, 1974 and to recompute such interest as may be lawfully owing, but that, except as granted, the petition is in all other respects denied.

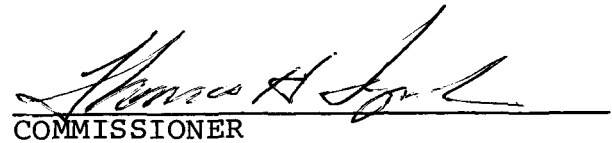
DATED: Albany, New York

STATE TAX COMMISSION

September 20, 1978

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ROGER A. BARRER

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 (x) ~~xxxx Period (x)~~ 1972:

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that  
xhe is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 25th day of August , 1978, xhe served the within  
Notice of Decision by (certified) mail upon Roger A. Barrer

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Roger A. Barrer  
152 West 13th Street  
New York, New York 10011

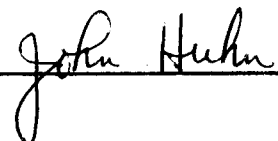
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York. ,

That deponent further says that the said addressee is the (~~representative~~  
~~xxxx~~) 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

25th day of August , 1978.







STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ROGER A. BARRER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (22) 22 of the :  
Tax Law for the Year (~~1971~~) 1972. :

State of New York  
County of Albany

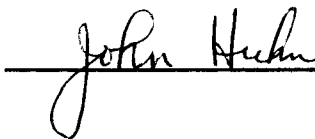
John Huhn , being duly sworn, deposes and says that  
xhe is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 25th day of August , 19 78 xhe served the within  
Notice of Decision by (certified) mail upon Harold Newman  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Harold Newman, Esq.  
8 Turner Drive  
New Rochelle, New York  
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

25th day of August , 19 78







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 25, 1978**

**Mr. Roger A. Barrer  
152 West 13th Street  
New York, New York 10011**

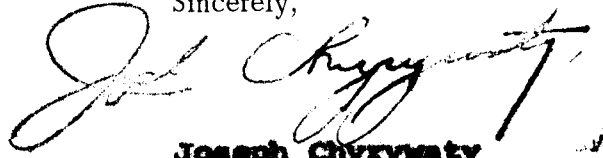
**Dear Mr. Barrer:**

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 **(4) 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 Chyrywat  
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the petition	:	
of	:	
ROGER A. BARRER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

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Petitioner, Roger A. Barrer, 152 West 13 Street, New York, New York 10011, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 10943).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 18, 1977 at 2:45 P.M. Petitioner appeared by Harold Newman, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether \$45,664.00 is the actual amount of alimony deduction taken on petitioner's 1972 income tax return.

II. Whether legal fees paid by petitioner to attorneys representing his wife, in connection with a property settlement incidental to divorce proceedings, was deductible as alimony or as "business" expense deductions.

III. Whether the amount of alimony deduction disallowed by the New York State Income Tax Bureau was actually deductible alimony.

FINDINGS OF FACT

1. Petitioner, Roger A. Barrer, filed a 1972 New York State combined income tax return (IT-208).

2. As the result of an audit, the Income Tax Bureau issued a Statement of Audit Changes on February 14, 1975 and a Notice of Deficiency on September 29, 1975 for personal income tax due in the amount of \$2,813.63, plus interest of \$518.58. The deficiency was based on a disallowance of \$18,300.00 that had been included in petitioner's alimony deductions.

3. The Income Tax Bureau determined that the petitioner had deducted \$45,664.00 in alimony payments as part of "miscellaneous" deductions of \$50,931.00. Petitioner objected to this, stating that nowhere on the tax return did the figure \$45,664.00 appear. The figure was obtained by the Income Tax Bureau in the ordinary course of the audit and was presented as a schedule:

<u>Misc.</u>	
Alimony	\$45,664.00
Tax Preparation	250.00
Safe Deposit Box	17.00
Legal Fees	<u>5,000.00</u>
	\$50,931.00

Petitioner was given the opportunity to substantiate his contention of error by submittal of his 1972 Federal schedule of miscellaneous deductions. The petitioner failed to do so.

4. The Income Tax Bureau allowed \$27,364.00 as an alimony deduction, based on substantiation by checks and a copy of the divorce decree submitted by petitioner, and then disallowed \$18,300.00.

5. The disallowance of alimony was based on:

a) Specific checks:

I. (Roger A. Barrer Special Account)	
Check #3, February 29, 1972, Payable	
to Faith Fudell Barrer and Hardie,	
Barovick, Konecky & Gaines for wife's	
legal fees...	\$ 1,750.00

II. (Roger Barrer)	
Check #1235, May 30, 1972, Payable	
to Faith Barrer and Hardee,	
Barovick & Konecky	
For wife's legal fees...	<u>15,000.00</u>
	16,750.00

b) An additional unsubstantiated amount	<u>1,550.00</u>
Total alimony disallowed	\$18,300.00

6. A copy of the minutes of the divorce trial of April 28, 1972 revealed the following excerpts from the settlement agreement:

(a) (Item 1, page 23) "The defendant shall pay to the plaintiff on the first day of each and every month, commencing May 1972, at the rate of \$40,000 a year for alimony, maintenance, and support for plaintiff and for their son Robert."

(b) (Item 8, page 125) "The defendant (petitioner) shall pay to the plaintiff the sum of \$15,000 in full payment of counsel fees and disbursements and the plaintiff releases and discharges all claims against the defendant or by third persons incurred by her for goods or services furnished at her request...."

7. Petitioner contended that the legal expenses to resist his wife's claim to be awarded alimony are related to expenses for management, conservation, maintenance and production of income or income producing property and are deductible under section 212 of the Internal Revenue Code.

#### CONCLUSIONS OF LAW

A. That the miscellaneous deduction schedule which indicated the alimony deduction of \$45,664.00 is accepted as having been done in the ordinary and normal course of performing an audit. That the petitioner has not sustained his burden of proof regarding his objection to the use of this figure as his alimony deduction on his 1972 income tax return.

B. That although the terms of the divorce settlement are made a part of the court's order, requiring the petitioner to pay alimony to his wife and \$15,000 in legal fees, the attorney's fees are not deductible as alimony. The legal fee does not constitute a periodic payment within the meaning and intent of section 71 of the Internal Revenue Code, nor is the legal fee includable in the wife's gross income pursuant to section 215 of the Internal Revenue Code; therefore, it is not deductible by petitioner.

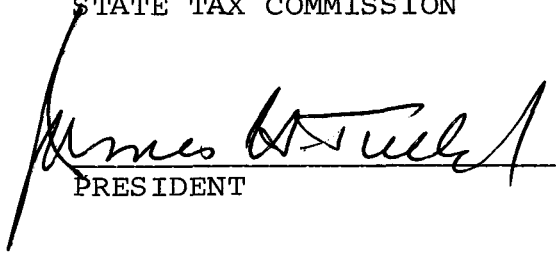
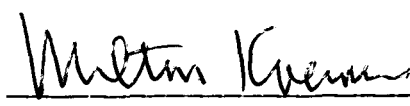
C. That the legal fees paid by petitioner are not deductible as "business" expenses within the meaning and intent of section 212(2) of the Internal Revenue Code.

D. That the Income Tax Bureau has properly disallowed \$18,300.00 of the "alimony" deduction as ineligible or unsubstantiated items.

E. That the petition of Roger A. Barrer is denied and the Notice of Deficiency issued September 29, 1975 is sustained, together with such interest as may be lawfully due.

DATED: Albany, New York  
August 25, 1978

STATE TAX COMMISSION

  
PRESIDENT  
COMMISSIONER  
COMMISSIONER