

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID DAVIS

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 ~~(s) or Period(s)~~ 1971.:  

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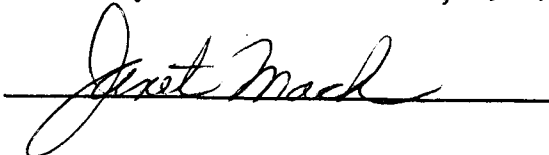
State of New York  
County of Albany

John Huhn, 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 22nd day of March, 1978, ~~he~~ served the within  
Notice of Decision by (certified) mail upon David Davis  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. David Davis  
Forest Lane  
Crompond, New York 10517  
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

22nd day of March, 1978

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

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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 ~~(s) xxxxx~~ 1971.:  
~~(s) xxxxx~~

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 22nd day of March , 19 78, she served the within  
Notice of Decision by (certified) mail upon Irving Klein

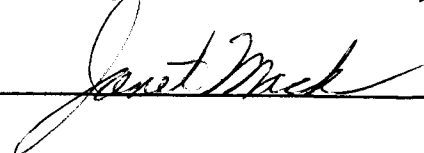
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Irving Klein, CPA  
150 Nassau Street  
New York, New York 10038

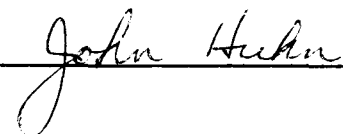
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

22nd day of March , 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

**March 22, 1978**

**Mr. David Davis  
Forest Lane  
Crompond, New York 10517**

**Dear Mr. Davis:**

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 **(x) 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	:	
DAVID DAVIS	:	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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Petitioner, David Davis, Forest Lane, Crompond, New York 10517, 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. 12573).

A small claims hearing was held before Joseph Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 28, 1977 at 2:45 P.M. Petitioner appeared by Irving Klein. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner is entitled to deductions claimed on his 1971 New York State income tax return for employee business expenses and miscellaneous itemized deductions.

FINDINGS OF FACT

1. Petitioner, David Davis, timely filed a 1971 separate New York State resident return on combined form IT-208.

2. Based on a substantiation audit of petitioner's 1971 return, the Income Tax Bureau issued a Statement of Audit Changes, disallowing miscellaneous deductions on the grounds that they were not substantiated by petitioner. Said Statement also disallowed employee business expenses claimed by him, on the grounds that he was not an outside salesman. The Statement reflected adjusted contributions claimed on the return, as well as a 20% capital gain modification pursuant to section 612(b)(11) of the Tax Law. Petitioner did not contest these adjustments. In accordance with the Statement of Audit Changes, a Notice of Deficiency was issued on March 31, 1975.

3. Petitioner was employed as a furniture salesman by Macy's Department Store, Herald Square, New York, New York, and was paid a straight commission based on a percentage of sales. Mr. Davis visited customers' homes to give assistance in the selection of the furniture and interior design of rooms. He contended that in rendering these services, he incurred expenses of \$4,568.50. The aforesaid amount included automobile expenses of \$2,174.00, as well as deductions for entertainment, gifts, telephone, Christmas cards, postage and periodicals totaling \$2,394.50. Since Macy's did not require these services, they did not reimburse petitioner for his expenses.

4. Mr. Davis maintained that although the aforementioned services were not required by his employer, his commissions would have been less than the amount reported had he not performed them.

5. Petitioner submitted copies of cancelled checks and receipts, letters from customers and schedules in an attempt to substantiate the employee business expenses and miscellaneous itemized deductions at issue.

#### CONCLUSIONS OF LAW

A. That the nature of petitioner's activities on behalf of his employer were such that he cannot be considered an outside salesman within the meaning and intent of section 62(2)(D) of the Internal Revenue Code. Therefore, only the portion of employee business expenses that constituted transportation expenses may be considered in arriving at adjusted gross income. The other employee business expenses may be considered as miscellaneous deductions in arriving at taxable income.

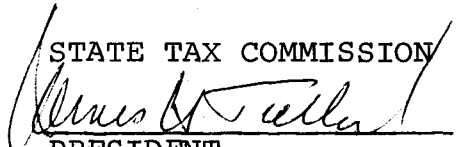
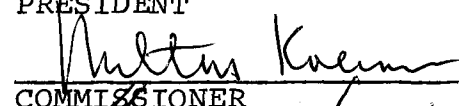
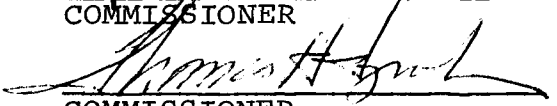
B. That petitioner has not sustained the burden of proof required to support automobile expense deductions of \$2,174.00, or the other employee-related expenses of \$2,394.50, within the meaning and intent of section 689(e) of the Tax Law. Therefore, no deductions are allowed for the claimed employee-related expenses.

C. That petitioner submitted sufficient documentation to support a miscellaneous deduction of \$85.00, but has not sustained the burden of proof required to support the balance of miscellaneous deductions claimed within the meaning and intent of section 689(e) of the Tax Law. Therefore only a miscellaneous deduction of \$85.00 is allowed.

D. That the modification made pursuant to section 612(b)(11) of the Tax Law is incorrect, since the aforesaid section pertains to taxable years beginning on or after January 1, 1972.

E. That the Income Tax Bureau is directed to modify the Notice of Deficiency issued March 31, 1975 in order to allow a miscellaneous deduction as provided in Conclusion of Law "C," above, and to eliminate the modification made pursuant to section 612(b)(11) of the Tax Law; that the petition of David Davis is otherwise denied and the Notice of Deficiency, except as modified, is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
March 22, 1978

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER