

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRED AND MARION SHEBER

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) ~~xxx~~ ~~xxxx~~ ~~xxxx~~ :  
1969, 1970 and 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 5th day of April , 19 78, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Fred & Marion Sheber

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

as follows: Mr. & Mrs. Fred Sheber  
Williams Street  
Valatie, New York 12184

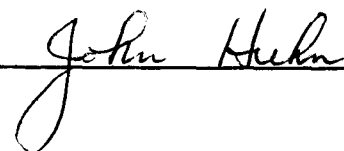
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

5th day of April , 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

**April 5, 1978**

**Mr. & Mrs. Fred Shoher  
Williams Street  
Valatie, New York 12184**

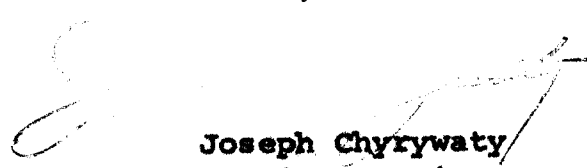
**Dear Mr. & Mrs. Sheber:**

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~~

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of : DECISION  
FRED AND MARION SHEBER :  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for :  
the Years 1969, 1970 and 1971. :  
:

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Petitioners, Fred and Marion Sheber, Williams Street, Valatie, New York 12184, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969, 1970 and 1971 (File No. 01513).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on July 19, 1977 at 9:15 A.M. Petitioner Fred Sheber appeared pro se and for his wife petitioner Marion Sheber. The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUES

I. Whether there was an agreement between petitioner Fred Sheber and his employer requiring him to incur certain employee business expenses during the years 1969 and 1970.

II. Whether petitioner Fred Sheber received supplemental income from his employer during the years 1969, 1970 and 1971, which he

failed to report on his New York State personal income tax returns for said years.

FINDINGS OF FACT

1. Petitioners, Fred Sheber and Marion Sheber, timely filed New York State personal income tax returns for the years 1969, 1970 and 1971. Petitioners reported employee business expenses in the amount of \$732.00 in the year 1969 and \$1,340.00 in 1970.

2. The Income Tax Bureau disallowed the employee business expenses on the grounds that the expenses were not incurred by petitioner Fred Sheber under an agreement with his employer obliging him to incur such expenses. It also contended that petitioner Fred Sheber had received unreported taxable supplemental income from his employer in the amount of \$1,048.00 in the year 1969, \$1,020.00 in 1970 and \$422.00 in 1971. A Notice of Deficiency was issued against petitioners on April 13, 1973 in the amount of \$338.69 in personal income tax, plus \$46.80 in interest, for a total due of \$385.49.

3. During the years at issue, petitioner Fred Sheber was employed by Foster Lipkins Corporation at various work sites in the Albany, New York, area as a truck driver. In late 1968, he entered into an agreement with his employer to use his own small pick-up truck (rather than the corporation's large truck) for local errands involving small amounts of material. He was paid \$20.00 a week for the expenses he incurred and the corporation reported this expense reimbursement on petitioner's payroll stub; however, it did not

include such reimbursement in the wages reported on petitioner's wage and tax statements.

4. Petitioner Fred Sheber properly computed his employee business expense on Federal Form 2106 for the years 1969 and 1970, on which he claimed the standard mileage allowance and excluded from the total mileage the mileage for commuting to and from work. He subtracted his employer's reimbursement to arrive at his excess employee business expenses in the amount of \$732.00 in the year 1969 and \$1,340.00 in 1970.

5. At no time was petitioner requested to substantiate his total employee business expenses by the Income Tax Bureau.

#### CONCLUSIONS OF LAW

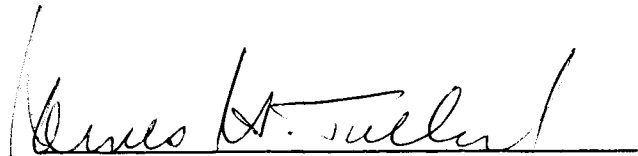
A. That there was an agreement between petitioner Fred Sheber and his employer requiring him to incur certain employee business expenses during the years 1969, 1970 and 1971, which were thereby deductible in accordance with the meaning and intent of section 62 of the Internal Revenue Code.


B. That petitioner Fred Sheber received reimbursement for employee business expenses and not supplemental income from his employer during the years 1969, 1970 and 1971, which he properly reported in accordance with the meaning and intent of section 62 of the Internal Revenue Code.

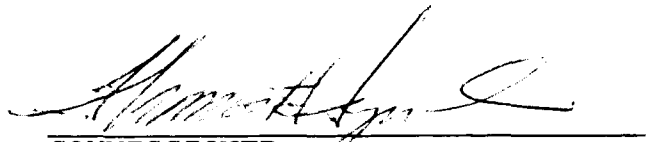
C. That the petition of Fred and Marion Sheber is granted and the Notice of Deficiency issued April 13, 1973 is cancelled.

DATED: Albany, New York  
April 5, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER