

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH E. SICA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income & Unincorporated Business :  
Taxes under Article(s) 22 & 23 of the :  
Tax Law for the Year(s) ~~1970~~ 1970, :  
1971, 1972, 1973 and 1974.

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 16th day of March , 1978 , she served the within

Notice of Decision by (certified) mail upon Joseph E. Sica

~~xxx (representative of the) xxx~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Joseph E. Sica  
167 Tenaflly Rd.  
Tenaflly, NJ 07670

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

16th day of March , 19 78

Janet Mack

John Huhn



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 16, 1978

Joseph E. Sica  
167 Tenaflly Rd.  
Tenaflly, NJ 07670

Dear Mr. Sica:

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) **722 & 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 Petitions :  
of :  
JOSEPH E. SICA : DECISION  
for Redetermination of Deficiencies or for :  
Refund of Personal Income and Unincorporated :  
Business Taxes under Articles 22 and 23 of :  
the Tax Law for the Years 1970, 1971, 1972, :  
1973 and 1974. :  
:

---

Petitioner, Joseph E. Sica, 167 Tenaflly Road, Tenaflly, New Jersey 07670, filed petitions for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1970 through 1974 (File Nos. 14318 and 00471).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 1, 1977 at 1:15 P.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether petitioner, a resident of New Jersey, maintained a bona fide business office outside New York State for unincorporated business tax purposes during the years 1970 through 1974.

II. Whether the business expenses claimed by petitioner, for the years 1970 and 1971 are deductible and/or fully documented.

FINDINGS OF FACT

1. Petitioner, Joseph E. Sica, filed New York State nonresident income tax returns for the years 1970 through 1974. He also filed New York State unincorporated business tax returns for said years. On said unincorporated business tax returns, he allocated his business income within and without New York State. He listed offices located in New York, New York, and Tenafly, New Jersey, as places where he regularly carried on his business.

2. A field audit performed by the Income Tax Bureau for the years 1970, 1971 and 1972 resulted in the disallowance of petitioner's business expenses for the years 1970 and 1971, as well as the disallowance of his business income allocation claimed for the years 1970, 1971 and 1972. Based on the results of the audit for the years 1970, 1971 and 1972, the Bureau also disallowed his business income allocation claimed for the years 1973 and 1974. It then issued notices of deficiency dated September 30, 1974 and March 29, 1976, imposing additional personal income and unincorporated business taxes against petitioner. The notice dated September 30, 1974 covered the years 1970, 1971 and 1972, while the notice dated March 29, 1976 covered the years 1973 and 1974.

3. Joseph E. Sica is a commercial artist who deals mainly with the design of promotional advertising displays. During the years 1970 through 1974, his business office was located at 801 Second Avenue, New York, New York. Petitioner contended that a portion of his home located in Tenafly, New Jersey, was also used as a studio and office during the years at issue.

4. Petitioner contended that during the period in question, he operated his business from both his New York City office and his home-office located in Tenaflly, New Jersey. However, his business stationery and telephone listed only the New York City office as his business address.

5. Petitioner asserted that during the years 1970 through 1974, he had only four to six clients at any one time and that they were aware of his office in Tenaflly, New Jersey. He contended that these clients often called him and picked up their orders at said office. He further asserted that he worked nights and on weekends at his home-office facility.

6. Petitioner contended that during the latter part of 1971 and for most of 1972, he did not come into his New York City office as a consequence of an automobile injury, but rather performed all of his work at home.

7. Petitioner did not submit any documentary evidence in connection with the business expenses disallowed by the Bureau. However, he claimed that at the time of the audit, all records were available. In addition, no documentary evidence was submitted to establish the nature or type of office facility located at his home in New Jersey.

#### CONCLUSIONS OF LAW

A. That petitioner, Joseph E. Sica, has not sustained the burden of proof required to show that he had a regular place of

business outside New York State during the years 1970 through 1974, in accordance with the meaning and intent of section 689(e) of the Tax Law.

B. That petitioner carried on his business from his office within New York State and, therefore, his entire business income is deemed to be derived from New York sources and properly allocable to New York State, in accordance with the meaning and intent of section 707(a) of the Tax Law.

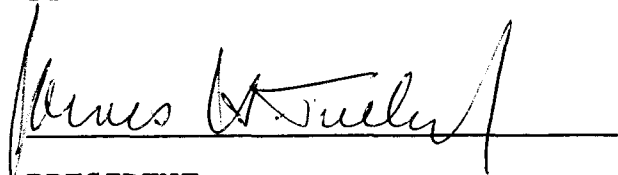
C. That petitioner failed to sustain the burden of proof required (in accordance with section 689(e) of the Tax Law) to show that he was entitled to allowances greater than those made in the Notice of Deficiency dated September 30, 1974, with respect to business expenses for the years 1970 and 1971.

D. That the petitions of Joseph E. Sica are denied and the notices of deficiency dated September 30, 1974 and March 24, 1976 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

March 16, 1978

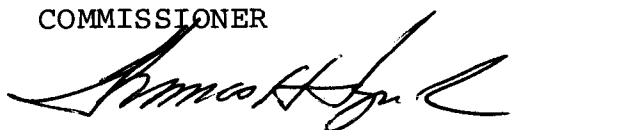
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER