

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM M. and EILEEN SKEHAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article ~~(5)~~ 22 of the  
Tax Law for the Year ~~(5)~~ ~~XXXX~~ ~~XXXX~~ ~~(5)~~  
1972


State of New York  
County of Albany

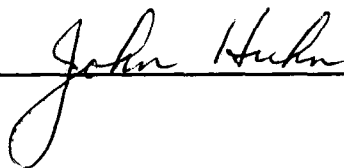
John Huhn, being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 17th day of February, 1977, ~~she~~ served the within  
Notice of Decision by (certified) mail upon William M. and Eileen  
Skehan ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: William M. and Eileen Skehan  
3 Bedford Road  
Port Washington, New York 11050  
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 ~~(XXXXXXXXXXXX)~~  
~~(XXXX)~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(XXXXXXXXXXXX)~~ petitioner.

Sworn to before me this

17th day of February, 1978.

  
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STATE TAX COMMISSION

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In the Matter of the Petition  
of  
WILLIAM M. and EILEEN SKEHAN  
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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DECISION

Petitioners, William M. and Eileen Skehan, residing at 3 Bedford Road, Port Washington, New York 11050, 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. 13419).

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 February 16, 1977 at 1:15 P.M. Petitioner William M. Skehan appeared pro se and for his wife, petitioner Eileen Skehan. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether unlabeled adjustments and miscellaneous expenses claimed on the petitioners' 1972 New York resident and nonresident income tax returns were deductible and/or fully documented.

II. Whether the petitioners, William M. and Eileen Skehan, properly filed New York State resident and nonresident income tax returns for the year 1972.

III. Whether the Tax Commission was restricted from issuing the Notice of Deficiency dated September 30, 1974 against the petitioners, William M. and Eileen Skehan.

FINDINGS OF FACT

1. Petitioners, William M. and Eileen Skehan, filed a New York State nonresident combined income tax return (Form IT-209) for the period January 1, 1972 to May 6, 1972, and filed a New York State resident income tax return (Form IT-201) for the period May 6, 1972 through December 31, 1972.

2. On March 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes, changing the filing status for the nonresident period to "Married - Filing Jointly", in conformity with the filing status claimed during the resident period. In addition, the life insurance premium deduction was adjusted to a maximum of \$100.00, and the withholding taxes claimed were disallowed in full

for lack of substantiation. The tax liability was recomputed based on these findings and in accordance with section 654(d) of the Tax Law.

3. On April 8, 1974, petitioners responded to the Statement of Audit Changes dated March 12, 1974 by filing a petition for redetermination of personal income taxes along with additional information.

4. On September 30, 1974, the Income Tax Bureau issued a Notice of Deficiency with a Revised Statement of Audit Changes, restating its findings in accordance with Finding of Fact "2", supra, and disallowing unlabeled adjustments in the sum of \$4,258.00 and miscellaneous deductions in the sum of \$2,575.00. It then allowed the withholding taxes claimed by the petitioners.

5. Petitioners did not contest the adjustment made by the Income Tax Bureau regarding the life insurance premium deductions and the tax computation of combined taxable income in accordance with section 654(d) of the Tax Law.

6. Petitioners contended that the Income Tax Bureau was restricted from issuing the Notice of Deficiency dated September 30, 1974, in accordance with section 1089(4) of the Tax Law. They further contended that the disallowance of the adjustments in the sum of \$4,258.00 and the disallowance of miscellaneous deductions in the sum of \$2,575.00 made by the Income Tax Bureau were improper

on the grounds that if a taxpayer files a petition with the Tax Commission under the aforesaid section, a Notice of Deficiency under section 1081 of the Tax Law may not thereafter be issued by the Tax Commission for the same taxable year.

7. Petitioners contended that they have complied with 20 NYCRR 148.1 by filing an IT-201 for the resident period and an IT-209 for the nonresident period. Petitioners further contended that the instructions for the preparation of New York State income tax returns which require that Form IT-203 must be filed for the nonresident period where Form IT-201 was filed for the resident period, has no basis in law or regulation. However, if they are in error, they elect to file Form IT-208 for the resident period and Form IT-209 for the nonresident period.

8. Neither the Income Tax Bureau nor the petitioners had any record of a Notice of Deficiency being issued in connection with the Statement of Audit Changes dated March 12, 1974.

9. Petitioners did not submit any documentary evidence in support of the claimed unlabeled adjustments and the claimed miscellaneous deductions.

10. From the period January 1, 1972 to May 7, 1972, the petitioners were residents of the State of Washington, a community property state. During this period, petitioner William M. Skehan

was employed by Touche Ross & Co. (Certified Public Accountants), as a certified public accountant in the State of Washington. The petitioner was also an attorney admitted to practice law in the State of New York.

11. On or about January 15, 1972 and until the end of February 1972, petitioner William M. Skehan secured a leave of absence from Touche Ross & Co. and came to New York to perform legal work for two professional athletic teams, the Islanders, a hockey team (Nassau Sports), and the Nets, a basketball team (Long Island Sports Enterprises Inc.). Upon completion of his legal work for the aforesaid athletic teams in New York, he returned to the State of Washington and resumed his position with Touche Ross & Co.

12. On or about May 7, 1972, petitioner William M. Skehan left his employment with Touche Ross & Co. in the State of Washington, moved to New York State with his wife, and began working for the aforesaid athletic teams.

#### CONCLUSIONS OF LAW

A. That petitioners, William M. and Eileen Skehan, have failed to meet the substantiation requirements pursuant to Internal Revenue Regulations 1.274-5. They have failed to sustain the burden of proof in accordance with the meaning and intent of section 689(e) of the Tax Law for the claimed adjustments of

\$4,258.00 and the claimed miscellaneous deductions of \$2,575.00, and that, therefore, such adjustments and deductions are not allowed.

B. That the income received by the petitioner William M. Skehan from New York State, while a resident of the State of Washington (a community property state) is divisible one-half to the husband and one-half to the wife under the laws of a community property state.

C. That section 632(f) of the Tax Law provides that if husband and wife determine their Federal income tax on a joint return but determine their New York income taxes separately, they shall determine their New York adjusted gross incomes separately as if their Federal adjusted gross incomes had been determined separately. Therefore, said community income can be divided equally and included in their separate New York State nonresident returns, regardless of the fact that the income was received for services rendered only by the husband.

D. That petitioners did not properly file New York State nonresident and resident income tax returns for the year 1972. In accordance with the meaning and intent of sections 611(b) and 631(b) of the Tax Law, the filing status elected by the petitioners must be applied for the entire taxable year. Section 654 of the

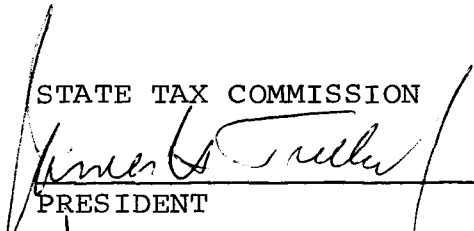
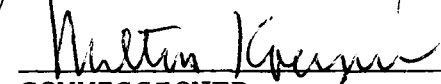
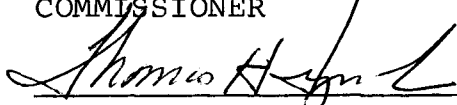


Tax Law does not provide for the election of a different filing status for the nonresident and resident period.

E. That there is no evidence that a Notice of Deficiency was issued by the State Tax Commission in connection with the Statement of Audit Changes dated March 12, 1974 and that, therefore, the State Tax Commission was not restricted from issuing the Notice of Deficiency dated September 30, 1974, in connection with the Revised Statement of Audit Changes of the same date issued by the Income Tax Bureau, in accordance with the meaning and intent of section 689(d) of the Tax Law. Sections 1089(4) and 1081 of the Tax Law are not relevant to this case.

F. That the petition of William M. and Eileen Skehan is granted to the extent of allowing the petitioners to file as "married filing separately" for both the nonresident and resident periods; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued on September 30, 1974, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
February 17, 1978

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER