

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
THOMAS A. BERARD, JR.

AFFIDAVIT OF MAILING

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

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 24th day of January , 1979, he served the within

Notice of Decision by (certified) mail upon Thomas A. Berard,

Jr. ~~(representative of)~~ the petitioner in the within proceeding,

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

as follows: Thomas A. Berard, Jr.
7 Bradford Road
Valley Stream, NY 11580

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

24th day of January , 1979.

Marilyn J. Papineau

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

January 24, 1979

**Mr. Thomas Berard
7 Bradford Road
Valley Stream, NY 11580**

Dear Mr. Berard:

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: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THOMAS A. BERARD, JR.	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1972.	:	

Petitioner, Thomas A. Berard, Jr., 7 Bradford Road, Valley Stream, New York 11580, 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. 13074).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1977 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner was entitled to claim dependency exemptions for his parents.

FINDINGS OF FACT

1. Petitioner, Thomas A. Berard, Jr., filed a New York State combined income tax return for 1972, wherein he claimed two dependency exemptions for his parents.

2. The Income Tax Bureau issued a Notice of Deficiency dated July 29, 1974 against petitioner, whereby both the two exemptions which he claimed for his parents were disallowed and a capital loss deduction was adjusted. The adjustment to the capital loss deduction was conceded and is not at issue.

3. Petitioner's mother and father were retired and received social security benefits of \$2,700.00 for 1972. In addition, they owned and operated an unincorporated business under the name and style of the Pine Terrace Motel.

4. Petitioner's parents filed a joint Federal return for 1972, wherein they reported gross receipts of \$2,573.00, total deductions of \$5,446.25 and claimed a net loss of \$2,873.25. The gross receipts were not used for the support of his parents.

5. Petitioner submitted checks totalling \$2,835.00 made payable to his mother and father; however, no evidence was submitted as to the intended purpose of these payments.

CONCLUSIONS OF LAW

A. That petitioner's parents had gross income of \$2,573.00 and also filed a joint return for 1972. Accordingly, they did not meet the requirements set forth pursuant to section 151(e)(1)A and section 151(e)(2) of the Internal Revenue Code and Article 22 of

the Tax Law; therefore, petitioner may not claim dependency exemptions for his parents.

B. That the petition of Thomas A. Berard, Jr. is denied and the Notice of Deficiency issued July 29, 1974 is sustained, together with such additional interest as may be lawfully owing.

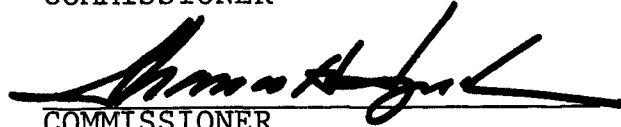
DATED: Albany, New York

January 24, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER