

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Francis Berardi :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the years 1969 & 1970. :

State of New York
County of Albany

Jay Vredenburg, 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 9th day of October, 1979, he served the within notice of Decision by certified mail upon Howard Hirschfeld the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

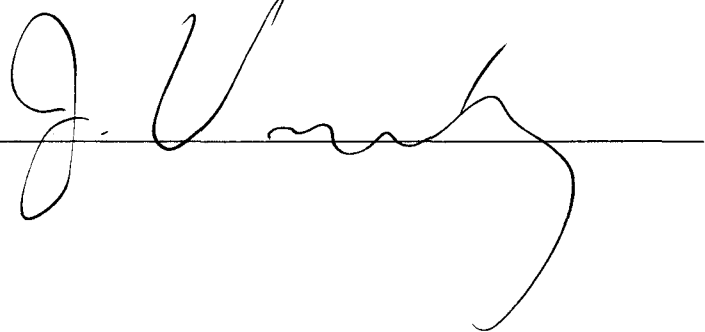
Mr. Howard Hirschfeld
225 Broadway
New York, NY 10007

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
9th day of October, 1979.

Marcy Dominini



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
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AFFIDAVIT OF MAILING

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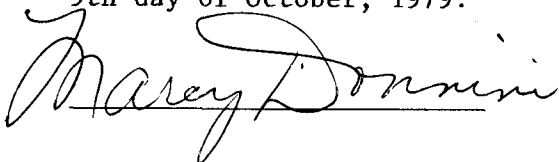
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Francis Berardi, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

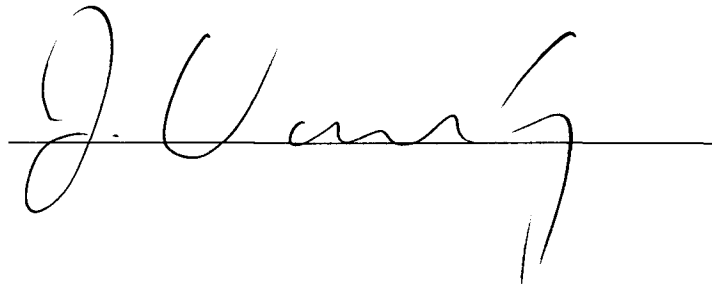
Francis Berardi
2453 E. 21st St.
Brooklyn, NY 11235

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
9th day of October, 1979.


Mary Dominici


J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 9, 1979

Francis Berardi
2453 E. 21st St.
Brooklyn, NY 11235

Dear Mr. Berardi:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative
Howard Hirschfeld
225 Broadway
New York, NY 10007
Taxing Bureau's Representative

2. On February 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner for 1969 and 1970. This was done on the grounds that he failed to include as income, reimbursement which he received from his employers for travel, lodging and meal expenses incurred by him while working in Albany, New York, away from his home. Accordingly, on February 26, 1973, the Income Tax Bureau issued a Notice of Deficiency to petitioner for \$658.29 in personal income tax, plus interest of \$106.15, for a total due of \$764.44.

3. Petitioner maintained a permanent place of abode at 2453 East 21st Street, Brooklyn, New York.

4. Petitioner was hired by Foster-Lipkins Corporation to work as a carpenter at the South Mall construction site in Albany, New York, for an indefinite period of time. He was laid off by Foster-Lipkins Corporation in June of 1969, and began working for Pasty & Fuhrman, Inc. at the same South Mall construction site for another indefinite period of time. While working in Albany, petitioner lived in a hotel during the week and returned to his residence in Brooklyn on weekends. His employers paid him supplemental living expenses of \$7,199.57 in 1969 and \$2,923.30 in 1970. These amounts are based on Income Tax Bureau audit of the books and records of his two employers. Petitioner contends that he received only \$75.00 a week in supplemental income.

CONCLUSIONS OF LAW

A. That the employment of petitioner, Francis Berardi, during 1969 and 1970 was for an indeterminate duration rather than just temporary in nature, and cannot be characterized as "away from home", within the meaning of section 162(a)(2) of the Internal Revenue Code.

B. That during 1969 and 1970, petitioner's tax home was in the Albany area, and supplemental income was includable as income; therefore, no deduction

was allowable for expenses and subsistence, since these were personal expenses and as such were nondeductible.

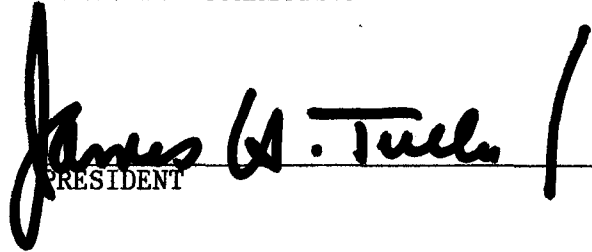
C. That petitioner failed to carry the burden of proof imposed by section 689(e) of the Tax Law, which requires him to show that the living expenses determined by the Income Tax Bureau were incorrect.


D. That the petition of Francis Berardi is denied and the Notice of Deficiency issued on February 26, 1973 is sustained, together with such additional interest as may be lawfully owing.

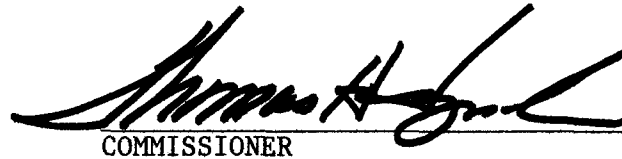
DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO..... Mr. Coburn.....

Mailed with better address this date.

11/29/79

Joseph Chyrywaty

M-75 (5/76)

50.

TP-50 (4-76) 25M

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CLAIM CHECK NO.

86957

HOLD

DATE

11/11/79

1ST NOTICE

10-16

2ND NOTICE

10-26

RETURN

Detached from
PS Form 3949-A
Feb. 1978

TAX APPEALS BUREAU
NOV 14 1979
RECEIVED
21st St
Brooklyn NY 11235

Reason checked
Mailed
Moved, left no address
Moved, left no address
Address not forwarded
Address unknown

23/10/79
11/15/79

TAX APPEALS BUREAU
SMALL CLAIMS
NOV 15 1979
RECEIVED

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS BERARDI

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or ~~Refund~~
~~of Personal Income~~
Taxes under Article ~~(s)~~ 22 of the
Tax Law for the Year(s) ~~1969 and 1970~~
1969 and 1970.

State of New York
County of Albany

Jay Vredenburg, 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 29th day of November, 1979, she served the within
Notice of Decision by ~~certified~~ mail upon Francis
Berardi ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Francis Berardi
4750 Bedford Avenue #4C
Brooklyn, New York

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~~ petitioner.

Sworn to before me this
29th day of November, 1979.

Joanne Krapp

[Signature]