

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Charles A. Jasper :

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 Year 1972. :

State of New York
County of Albany

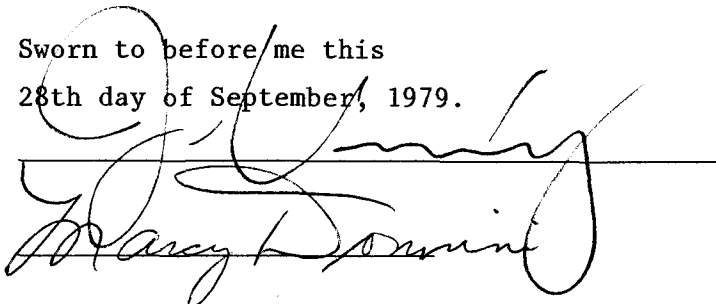
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Charles A. Jasper, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles A. Jasper
10 Meadowlark Dr.
Latham, NY 12110

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
28th day of September, 1979.


Nancy Dominick

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Charles A. Jasper
10 Meadowlark Dr.
Latham, NY 12110

Dear Mr. Jasper:

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,



cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHARLES A. JASPER : 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, Charles A. Jasper, 10 Meadowlark Drive, Latham, New York 12110, 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. 14835).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on September 22, 1978 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioner substantiated deductions claimed for real estate taxes and business expenses.

II. Whether petitioner properly claimed a deduction for moving expenses.

FINDINGS OF FACT

1. Petitioner, Charles A. Jasper, filed a New York State Combined Income Tax Return for 1972, on which he claimed employee business expenses of \$2,419.00 and real estate taxes of \$969.00.

2. On May 19, 1975, the Income Tax Bureau issued a Notice of Deficiency for 1972, asserting personal income tax of \$51.59 (including surcharge), plus

interest of \$8.10, for a total of \$59.69. Said deficiency was based on the following adjustments:

<u>ITEM</u>	<u>CLAIMED</u>	<u>ALLOWED</u>	<u>ADJUSTMENTS</u>
Real Estate Taxes	\$ 969.00	\$ 809.40	\$ 159.60
Postage	81.00	30.00	51.00
Advertising & Printing	63.00	31.50	31.50
Parking Fees & Tolls	67.00	-0-	67.00
Automobile Expenses	<u>1,935.00</u>	<u>1,237.50</u>	<u>697.50</u>
Total Adjustments			<u>\$1,006.60</u>

Petitioner conceded to the adjustment of \$159.60 for real estate taxes.

3. During the hearing, the Income Tax Bureau claimed a greater deficiency than that asserted in the Notice of Deficiency, in that the deduction which petitioner claimed for moving expense failed to meet the 50-mile requirement provided by law. During 1972, petitioner, Charles A. Jasper, was a sales representative for Metropolitan Life Insurance Company ("Metro"). During said year, Metro transferred petitioner from Amsterdam to Troy, New York, resulting in a moving expense of \$938.00. Said amount was not part of the Notice of Deficiency. At the hearing, petitioner testified that the distance from his home to his office in Amsterdam was 1½ miles, that the distance from Amsterdam to Latham was 35 miles, and the distance from his home in Latham to the office in Troy was 5 miles.

4. Petitioner submitted no documentary evidence to show that he was entitled to employee business expenses in excess of the amount which was allowed by the Income Tax Bureau.

CONCLUSIONS OF LAW

A. That petitioner, Charles A. Jasper, has not sustained the burden of proof imposed by section 689(e) of the Tax Law, which requires him to show that he was entitled to deduct automobile expenses of more than \$1,237.50 and other business expenses of \$61.50.

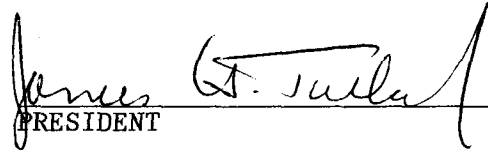
B. That the deduction claimed for a moving expense is disallowed, since petitioner did not meet the requirement of Treas. Reg. section 1.217, in that his new principal place of work was not 50 miles farther from his former residence than was his former principal place of work. Although the deduction for a moving expense was not included in the Notice of Deficiency, the Tax Commission has the power (under section 689(d)(1) of the Tax Law) to determine a greater deficiency, if claim therefor is asserted at or before the hearing. At the hearing, the Income Tax Bureau asserted a greater deficiency than that contained in the Notice of Deficiency; therefore, the Income Tax Bureau is directed to increase said Notice, so as to reflect the disallowance of moving expenses.

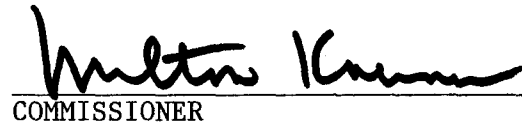
D. That the petition of Charles A. Jasper is denied and the Notice of Deficiency should be increased to the extent which is indicated in Conclusion of Law "B", together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER