

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD H. MC DEVITT

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) ~~or Period(s)~~ 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 6th day of April , 1979 , she served the within
Notice of Decision by (certified) mail upon Richard H. McDevitt

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Richard H. McDevitt
407 Soundview Avenue
Mamaroneck, New York 10543

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.

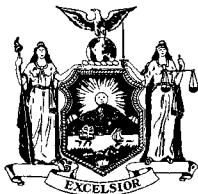
That deponent further says that the said addressee is the ~~(representative~~
~~of the)~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

6th day of April , 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

April 6, 1979

Richard H. McDevitt
407 Soundview Avenue
Manhasset Neck, New York 10343

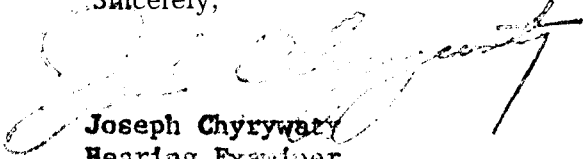
Dear Mr. McDevitt:

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: ~~Partitioner's Representative~~

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
RICHARD H. MC DEVITT : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1972.

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 April 17, 1978. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

I. Whether petitioner properly reported rental income.

II. Whether petitioner is entitled to deductions for charitable contributions and depreciation expense.

1. Petitioner, Richard H. McDevitt, and his wife, June M. McDevitt, timely filed a New York State combined income tax return for 1972.

2. On June 30, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioner, asserting personal income tax of \$82.15, plus interest of \$13.60, for a total of \$95.75. Said Notice of Deficiency contained the following adjustments:

	<u>REPORTED</u>	<u>CORRECTED</u>	<u>ADJUSTMENT</u>
Interest income - Husband	\$ - 0 -	\$ 6.69	\$ 6.69
Interest income - Wife	13.38	6.69	(6.69)
Rental income - Husband	- 0 -	235.13	235.13
Rental income - Wife	304.46	235.13	(69.33)
General Sales Tax	518.00	465.73	52.27
Contributions	475.00	88.00	387.00
Interest expense	3,732.31	3,632.31	100.00
Total Adjustment			<u>\$705.07</u>

Petitioner conceded to all adjustments, except those relating to rental income and contributions.

3. Petitioner submitted documentary evidence showing that he made charitable contributions of \$56.00 during 1972.

4. Petitioner claimed that he should be allowed a deduction for depreciation expense on rental property which he failed to deduct on his 1972 income tax return. However, he did not submit any documentary evidence as to the adjusted basis of the rental property or to support a deduction for depreciation expense.

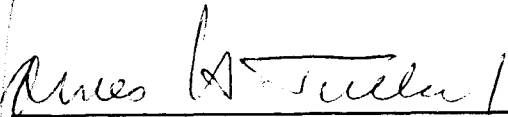
CONCLUSIONS OF LAW

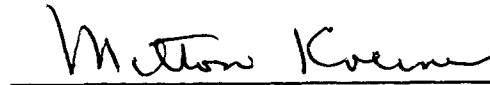
A. That petitioner, Richard H. McDevitt, failed to sustain the burden of proof (in accordance with the meaning and intent of section 689(e) of the Tax Law) in substantiating his deductions for charitable contributions and depreciation expense.

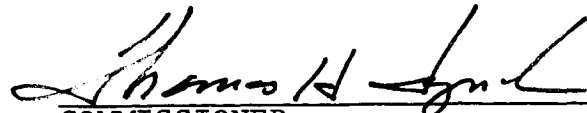
B. That the petition of Richard H. McDevitt is denied and the Notice of Deficiency issued June 30, 1975 for \$95.75 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
April 6, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER