

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Clarence G. Boone :

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 1974. :

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 November, 1980, he served the within notice of Decision by certified mail upon Clarence G. Boone, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

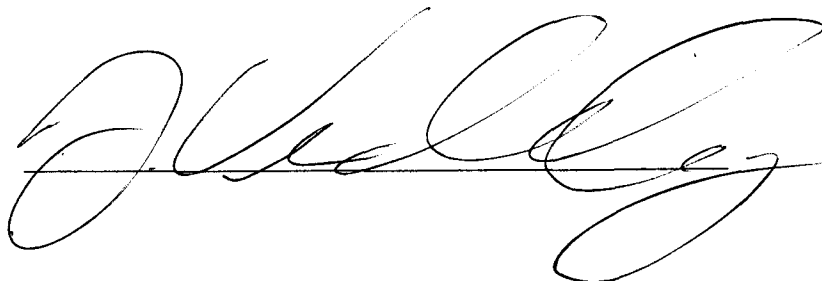
Clarence G. Boone
945 Spencer St.
Syracuse, NY 13204

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 November, 1980.

Dorothy A. Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Clarence G. Boone :

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 1974. :

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 November, 1980, he served the within notice of Decision by certified mail upon Alvin O. Bieling 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. Alvin O. Bieling
351 So. Warren St.
Syracuse, NY 13202

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
28th day of November, 1980.

Detorah A. Bank

J. Vredenburg

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

November 28, 1980

Clarence G. Boone
945 Spencer St.
Syracuse, NY 13204

Dear Mr. Boone:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Alvin O. Bieling
351 So. Warren St.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CLARENCE G. BOONE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	

Petitioner, Clarence G. Boone, 945 Spencer Street, Syracuse, New York 13204, 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 1974 (File No. 20274).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on June 12, 1980 at 10:45 A.M. Petitioner appeared by Alvin O. Bieling, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether legal fees incident to divorce proceedings that are incurred and paid by petitioner during the taxable year are deductible.

FINDINGS OF FACT

1. Petitioner, Clarence G. Boone, filed a New York State Income Tax Resident Return for 1974 on which was reported \$6,250.00 for tax consultation under miscellaneous deductions.

2. On September 26, 1977, the Audit Division issued a Notice of Deficiency for 1974 against petitioner disallowing the tax consultation on the grounds that legal expenses claimed are not deductible since they were not ordinary

and necessary nor closely related to the production, maintenance or protection of taxable income. The Notice imposed additional personal income tax of \$937.50, plus interest of \$195.18, for a total due of \$1,132.68.

3. The petitioner went through a divorce proceeding during 1974 in which he paid legal fees for himself and for his ex-wife. Petitioner presented statements and cancelled checks in substantiation of the total legal expenses paid. The statements showed that the petitioner's legal services were \$5,000.00 and his ex-wife's legal services were \$7,500.00, of which the statements reported one-half of the cost for the services rendered was for tax consultations and research in connection with alimony and other tax considerations in connection with divorce proceedings.

4. At the hearing, petitioner was given thirty days to present any evidence with respect to these expenses. No evidence was forthcoming.

CONCLUSIONS OF LAW

A. That generally, attorneys' fees and other costs paid in connection with a divorce, separation, or decree for support are not deductible by either the husband or wife. However, the part of an attorney's fee and the part of the other costs paid in connection with a divorce, legal separation, written separation, or a decree for support which are properly attributable to the production or collection of amounts includible in gross income under section 71 of the Internal Revenue Code are deductible by the taxpayer under section 212 of the Internal Revenue Code.

B. That fees paid by a taxpayer to his attorney for consultation and advice in tax matters arising in connection with production or collection of taxable income is generally deductible; however, petitioner has failed to sustain the burden of proof within the meaning and intent of section 689(e) of the Tax Law, in establishing how these fees paid to his attorney were allocated

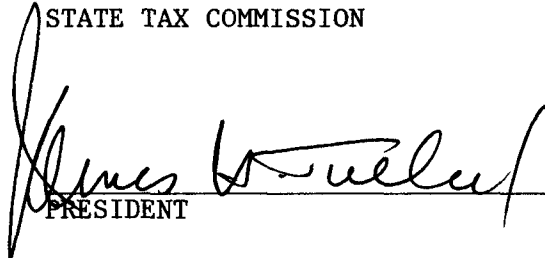
and how the reported expenses were directly attributable to the production, maintenance or protection of taxable income. That the fees paid to his wife's attorney are not deductible since they were not directly connected with production of his income.

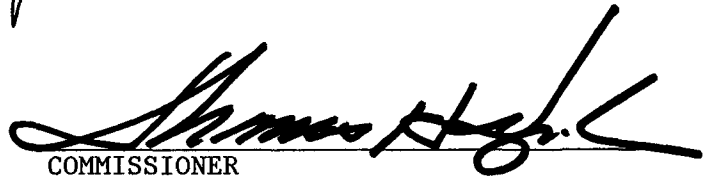
C. That the petition of Clarence G. Boone is denied and the Notice of Deficiency issued September 26, 1977 for the year 1974 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

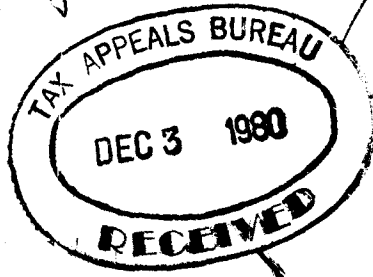
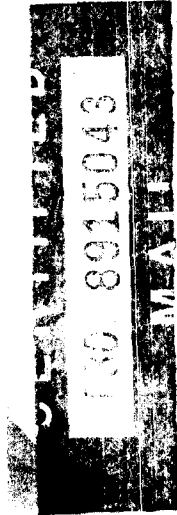
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STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



☐ Moved, left no address
☐ No such number
☒ Moved, not deliverable
☐ Addressee unknown

Alvin O. Bieling
351 So. Warren St.
Syracuse, NY 13202



order expired

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Ref Copy

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

November 28, 1980

Clarence G. Boone
945 Spencer St.
Syracuse, NY 13204

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Alvin O. Bieling
351 So. Warren St.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
CLARENCE G. BOONE
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
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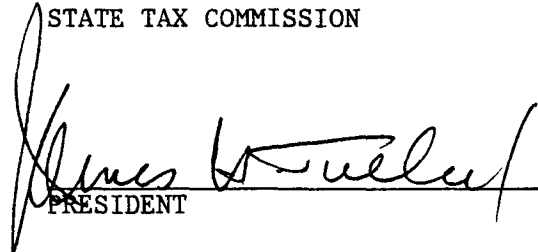
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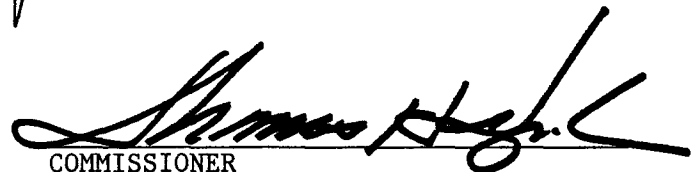
C. That the petition of Clarence G. Boone is denied and the Notice of Deficiency issued September 26, 1977 for the year 1974 is sustained, together with such additional interest as may be lawfully owing.

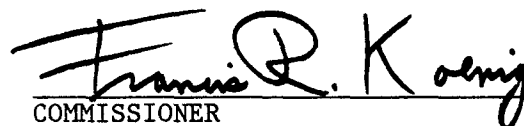
DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER