

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

John A. Mullally :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon John A. Mullally, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John A. Mullally  
Box 135

White Sulphur Springs, NY 12787  
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  
23rd day of May, 1980.

Joanne Krapp

John A. Mullally

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

John A. Mullally

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Bernard Ruderman 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. Bernard Ruderman  
Professional Bldg  
Woodridge, NY 12789

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  
23rd day of May, 1980.

Joanne Krapp

J. Vredenburg

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

May 23, 1980

John A. Mullally  
Box 135  
White Sulphur Springs, NY 12787

Dear Mr. Mullally:

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  
Bernard Ruderman  
Professional Bldg  
Woodridge, NY 12789  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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

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Petitioner, John A. Mullally, Box 135, White Sulphur Springs, New York 12787, 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. 16312).

On August 8, 1979, petitioner advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUES

I. Whether petitioner is entitled to automobile expenses greater than the amount allowed as a result of audit.

II. Whether petitioner is entitled to a deduction for miscellaneous expenses of \$400.00, as claimed on his return.

FINDINGS OF FACT

1. Petitioner, John A. Mullally, timely filed a New York State Combined Income Tax Resident Return with his wife for 1972.

2. On November 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes wherein a deduction claimed for automobile expenses of \$2,214.00 was allowed to the extent of \$414.00. The basis stated for said adjustment was that "travel expenses have been allowed to the extent that the cost of the use of your auto exceeds the cost of public transportation". Additionally, an adjustment was made to miscellaneous deductions of \$132.00 due to lack of substantiation. Accordingly, a Notice of Deficiency was issued June 24, 1974, asserting additional personal income tax of \$154.58, plus interest of \$13.82, for a total due of \$168.40.

3. Petitioner claimed automobile expenses as an adjustment to income. Said expenses were explained in a schedule accompanying his Federal return as "travel expense in connection with employment, not reimbursed, as union operating engineer, local 825 (requires carrying of tools)". The claimed deduction of \$2,214.00 was computed on the basis of 19,600 miles multiplied by the standard mileage rate. Petitioner claimed that the automobile expenses were incurred going to and from work each day and are deductible since they were incurred for travel away from his tax home.

4. During 1972, petitioner received wages from three sources, as follows:

<u>Employer</u>	<u>Wages</u>
Operating Engineers Local 825 Newark, New Jersey	\$ 800.00
County Asphalt, Inc. Tarrytown, New York	13,246.13
Helmer-Cronin Construction, Inc. Stony Point, New York	2,101.92

5. The record is void of information or substantiation relevant to petitioner's tax home, the union requirements for hauling tools, the duration of petitioner's job assignments and the reporting requirements.

6. Petitioner offered no substantiation for that portion of the miscellaneous deductions which were disallowed.

CONCLUSIONS OF LAW

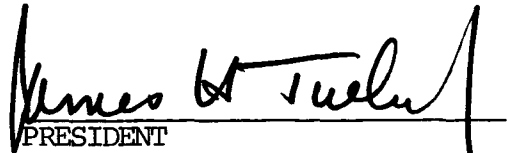
A. That petitioner, John A. Mullally, has failed to sustain the burden of proof under section 689(e) of the Tax Law to show that he is entitled to automobile expenses and miscellaneous deductions greater than the amount allowed on audit.

B. That the petition of John A. Mullally is denied and the Notice of Deficiency dated June 24, 1974 is sustained, together with such additional interest as may be lawfully owing.

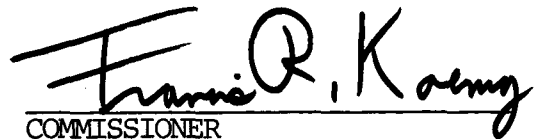
DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER