

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Roger M. Quinnan :

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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon Roger M. Quinnan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

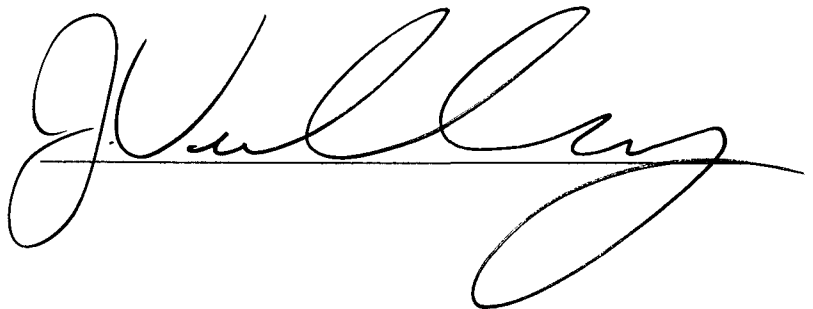
Roger M. Quinnan
705 Montcalm Pl.
St. Paul, MN 55116

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
22nd day of February, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Roger M. Quinnan

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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon Robert Toan 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. Robert Toan
375 Park Ave.
New York, NY

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
22nd day of February, 1980.

Joanne Knapp

J. Vredenburg

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

February 22, 1980

Roger M. Quinnan
705 Montcalm Pl.
St. Paul, MN 55116

Dear Mr. Quinnan:

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
Robert Toan
375 Park Ave.
New York, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROGER M. QUINNAN	:	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, Roger M. Quinnan, 705 Montcalm Place, St. Paul, Minnesota 55116, 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. 13662).

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 August 23, 1978 at 10:45 A.M. Petitioner appeared by Robert Toan, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether payments made to petitioner's former wife during the year 1972 constituted deductible alimony payments.

FINDINGS OF FACT

1. Petitioner, Roger M. Quinnan, filed a "tentative", and subsequently, an "amended" New York State Income Tax Resident Return for the year 1972 on which he claimed, as an itemized deduction, alimony payments of \$23,175.12.

2. On audit, the Income Tax Bureau issued a Notice of Deficiency, dated January 26, 1976, along with an explanatory Statement of Audit Changes, on which the alimony deduction was reduced to \$15,600.00, resulting in an adjustment of \$7,575.12. Petitioner conceded \$824.15 of the \$7,575.12 adjustment.

3. A separation agreement was executed on February 26, 1972 by petitioner and his wife, Sally E. Quinman, which provided that she be paid:

"As and for her support and maintenance and the support, maintenance and education of the children of the marriage herein, the sum of \$1,900.00 per month, commencing March 1, 1972 and monthly thereafter on the first of each ensuing month."

The agreement also provided that:

"The monthly payment of \$1,900.00 includes the sum of \$340.00 estimated as the monthly average cost for the special medical treatments required by the son, Gerald, herein. Whenever such professional services are not required, the monthly payment shall be reduced by said sum of \$340.00 or any portion thereof."

4. The Income Tax Bureau contended that the \$340.00 represented a contribution to child support and, therefore, was not deductible as alimony. The Bureau further contended that any payments in excess of the amount stipulated by the separation agreement were not deductible.

5. Petitioner contended that the \$340.00 was part of the monthly alimony payment required under the separation agreement, and that the amounts paid in excess of the required \$1,900.00 represented advance payment of alimony due in 1973. He maintained that one primary reason for the advance payments was to allow his former wife to meet her real estate tax and estimated income tax obligations. Although petitioner submitted copies of checks payable to his former wife in the sum of \$22,350.97, as proof of alimony payments, none of the checks had notations or other indications that they were intended as, or represented advance payment of alimony.

CONCLUSIONS OF LAW

A. That the \$340.00 included in the amount required to be paid monthly constituted a fixed amount specifically designated as a sum which was payable for an item of support of a minor child under Section 71(b) of the Internal Revenue Code and accordingly is not an alimony payment deductible under Section 215 of the Internal Revenue Code and Section 615 of the Tax Law.

B. That any advance payments of alimony were payments in excess of the amount owed by petitioner at the time of payment and thus would not be deductible under Section 215 of the Internal Revenue Code and Section 615 of the Tax Law (Moore v. United States, 78-1 USTC Para. 9227, 449 F. Supp. 163).

C. That the petition of Roger M. Quinnan is denied and the Notice of Deficiency issued January 26, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER