

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Eli & Alice Weller :

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Eli & Alice Weller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eli & Alice Weller
4423-9th Avenue
Brooklyn, NY 11220

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
18th day of July, 1980.

Deborah A Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Eli & Alice Weller

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Aaron Klitenick the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

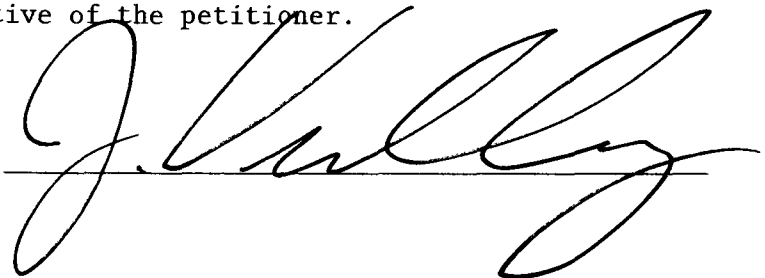
Mr. Aaron Klitenick
1727-47th St.
Brooklyn, NY 11204

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
18th day of July, 1980.

Ruth A Bank



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

July 18, 1980

Eli & Alice Weller
4423-9th Avenue
Brooklyn, NY 11220

Dear Mr. & Mrs. Weller:

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
Aaron Klitenick
1727-47th St.
Brooklyn, NY 11204
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ELI WELLER and ALICE WELLER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioners, Eli Weller and Alice Weller, 4423 9th Avenue, Brooklyn, New York 11220, 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. 14055).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 29, 1979 at 9:15 A.M. Petitioner appeared by Aaron Klitenick. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether petitioner Eli Weller was entitled to deduct automobile expenses.

II. Whether petitioners properly claimed a loss from rental property.

FINDINGS OF FACT

1. Petitioners, Eli Weller and Alice Weller, timely filed a joint New York State Income Tax Resident Return for the year 1972.

2. On December 13, 1973, the Income Tax Bureau issued a Statement of Audit Changes to petitioners wherein, as the result of an audit, adjustments were made to travel expenses, rental income and expenses, and medical and

dental expenses, in the amounts of \$3,010.78, \$969.24, and \$304.15 respectively. Additionally, medical and dental expenses were further adjusted by \$119.40, which represented 3 percent of the increase in adjusted gross income as the result of the aforementioned adjustments to travel expenses and rental income and expenses. Accordingly, on September 30, 1974 a Notice of Deficiency was issued against petitioners asserting additional personal income tax of \$163.59, plus interest of \$17.92, for a total due of \$181.51.

3. Petitioners did not contest the adjustment to medical and dental expenses of \$304.15.

4. The adjustment to travel expenses of \$3,010.78 related to automobile expenses claimed of \$3,069.50. There were no adjustments made to the balance of expenses claimed.

5. Petitioner Eli Weller was employed during the year 1972 as an outside salesman for Ehrlich Food Co., Inc., 581 Austin Place, Bronx, New York. He worked six days a week, and visited his employer's office frequently each day. He was required to use his personal automobile and received an expense allowance of \$95.00 per week, the sum of which was included on his wage and tax statement as "other compensation".

6. During the course of the hearing, petitioner Eli Weller submitted bills, checks, receipts and other information to support business automobile expenses of \$2,051.48.

7. Petitioners owned a two-family dwelling and claimed a rental loss of \$935.94 on the business portion thereof. On audit, no allowance was made for depreciation on the house since petitioners failed to establish the original cost basis. During the hearing held herein, petitioners submitted a closing statement which established a purchase price of \$40,000.00. Other documentation

was submitted pertaining to various expenses attributable to rental income.

CONCLUSIONS OF LAW

A. That based on documentary and other evidence, petitioner Eli Weller is properly entitled to deduct business automobile expenses of \$2,051.48 for the year 1972.

B. That based on documentary and other evidence, petitioners are properly entitled to claim a rental loss of \$935.94.

C. That adjustment to medical and dental expenses of \$304.15 is sustained.

D. That an additional medical adjustment of \$30.54 is required to be made as a result of the increase in adjusted gross income resulting from incorporation of the adjustment to automobile expenses claimed pursuant to Conclusion of Law "A".

E. That the petition of Eli Weller and Alice Weller is granted to the extent provided in Conclusions of Law "A", "B" and "D"; and that, except as so granted, the petition is in all other respects denied.

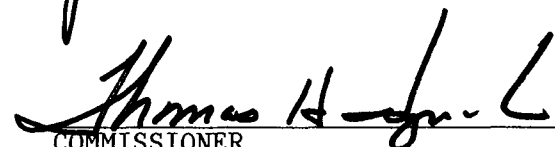
F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated September 30, 1974 to be consistent with the decision rendered herein.

DATED: Albany, New York

JUL 18 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER