

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Claude W. & Ruth L. Booth :

: 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 Years :
1970 - 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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Claude W. & Ruth L. Booth, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Claude W. & Ruth L. Booth
20 W. Academy St.
Canisteo, NY 14823

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
19th day of June, 1981.

James A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Claude W. & Ruth L. Booth :

: 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 Years :
1970 - 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 19th day of June, 1981, he served the within notice of Decision by certified mail upon William A. Argentieri 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. William A. Argentieri
Shults & Shults
9 Seneca St.
Hornell, NY 14843

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
19th day of June, 1981.

Garnie A. Hagelind

J. Vredenburg

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

June 19, 1981

Claude W. & Ruth L. Booth
20 W. Academy St.
Canistota, NY 14823

Dear Mr. & Mrs. Booth:

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
William A. Argentieri
Shults & Shults
9 Seneca St.
Hornell, NY 14843
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
CLAUDE W. BOOTH and RUTH L. BOOTH : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1970, 1971 and 1972.

Petitioners, Claude W. Booth and Ruth L. Booth, 20 West Academy Street, Canisteo, New York 14823, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970, 1971 and 1972 (File No. 10617).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on October 22, 1980 at 10:45 A.M. Petitioner Claude W. Booth appeared with William A. Argentieri, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioners properly deducted employee business expenses and contributions.

FINDINGS OF FACT

1. Petitioners, Claude W. Booth and Ruth L. Booth, timely filed New York State income tax returns for 1970 through 1972 on which they reported employee business expenses of \$2,087.00, \$1,984.00 and \$1,967.32 and contributions of \$959.00, \$1,997.00 and \$1,657.81, respectively.

2. On April 12, 1974, the Income Tax Bureau issued three notices of deficiency, one for each of the years at issue 1970 through 1972, asserting additional personal income taxes of \$504.00, plus interest of \$58.47, for a total due of \$562.47. On said notices, it disallowed, in full, employee business expenses and, in part, contributions. The contributions were reduced by \$90.00 and \$588.50 for 1970 and 1971, respectively, and for 1972 additional contributions of \$269.69 were allowed. For 1972, petitioners deducted employee business expenses twice and this adjustment is not at issue.

3. During the period at issue petitioner Claude W. Booth was employed by the Sherwin-Williams Company in Hornell, New York as manager of its branch office. Petitioner was required to travel over a large area for the purpose of servicing the Sherwin-Williams' dealers in his area. Petitioner was reimbursed by Sherwin-Williams Company for the use of his car at a flat rate of seven cents a mile. Petitioner Claude W. Booth reported the following information on his returns for each of the years at issue:

	<u>1970</u>	<u>1971</u>	<u>1972</u>
Total mileage	37,641	31,497	34,681
Personal mileage	<u>4,141</u>	<u>3,169</u>	<u>3,815</u>
Business mileage	33,500	28,328	30,866
15,000 miles at 5¢ per mile	\$ 750.00	\$ 750.00	\$ 750.00
18,500 miles at 2¢ per mile	370.00		
13,328 miles at 2¢ per mile		267.00	
15,866 miles at 2¢ per mile			317.32
Depreciation	967.00	967.00	900.00
Total employee business expense	<u>\$2,087.00</u>	<u>\$1,984.00</u>	<u>\$1,967.32</u>

Petitioner Claude W. Booth used the optional method of calculating automobile expense. The standard mileage rate during the years at issue was 12¢ a mile on the first 15,000 miles and 9¢ in excess of 15,000 miles. Petitioner used 5¢ and 2¢ because he was reimbursed 7¢ per mile by Sherwin-Williams

Company. Petitioner claimed depreciation when using the optional method though not deductible under this method.

4. At the hearing, petitioners requested that they be allowed to change the method of determining automobile expenses to the regular method. Petitioners contended his business mileage was the same as originally reported. Petitioner presented the following schedules:

	<u>1970</u>	<u>1971</u>	<u>1972</u>
Gas & Oil	\$1,505.64	\$1,259.88	\$1,387.20
Tires, etc.	297.88	326.90	394.86
Repairs, etc.	335.25	137.43	222.18
Insurance	187.00	218.00	302.00
License	-0-	-0-	38.50
Depreciation	967.00	967.00	900.00
	<u>\$3,292.77</u>	<u>\$2,909.21</u>	<u>\$3,244.74</u>
Less reimbursement from Sherwin-Williams Co.	925.17	-0-	-0-
	<u>\$2,367.60</u>	<u>\$2,909.21</u>	<u>\$3,244.74</u>
Less: 11% Personal Use of Automobile	260.44	319.99	356.92
	<u>\$2,107.16</u>	<u>\$2,589.22</u>	<u>\$2,887.82</u>
Less reimbursement from Sherwin-Williams Co.	-0-	762.02	687.14
	<u>\$2,107.16</u>	<u>\$1,827.20</u>	<u>\$2,200.68</u>
Plus license	39.75	39.75	-0-
Total now claimed	<u>\$2,146.91</u>	<u>\$1,866.95</u>	<u>\$2,200.68</u>

5. Based on Sherwin-Williams Co. reimbursement policy, the petitioner was reimbursed for traveling 13,216; 10,886; and 9,816 miles for the years 1970 through 1972, respectively. Petitioners did not submit diaries for review prior to the Income Tax Bureau's determination. Subsequently, diaries were submitted which contained entries for mileage traveled and one location (city or town) per business day. No entries as to who was visited or what business transactions, if any, transpired. The Audit Division contended that the mileage figures were inflated based on New York State maps and mileage reported on the automobile repair bills.

7. Petitioner Claude W. Booth submitted various automobile repair bills and one bill for each of the years at issue from a service station for all gas, oil and tires purchased each year. Petitioner Claude W. Booth also submitted diaries which contained the number of miles traveled and the name of the location traveled to.

8. At the hearing, petitioners submitted documentary evidence in support of their deductions for contributions, but the evidence submitted was not greater than the amount previously allowed by the Income Tax Bureau.

CONCLUSIONS OF LAW

A. That tax deductions and exemptions depend upon clear statutory provisions, and the burden is upon the taxpayer to establish a right to them. (Matter of Grace v. New York State Tax Commission, 37 N.Y.2d 193; Matter of Central Office Alarm Co. v. State Tax Commission, 58 A.D.2d 162.) That petitioners, Claude W. Booth and Ruth L. Booth, have failed to satisfy the record-keeping requirements of Treasury Regulation 1.274-5, and they have failed to sustain the burden of proof required by section 689(e) of the Tax Law to establish employee business expenses greater than \$660.80, \$544.30 and \$490.80 for 1970 through 1972, respectively, in accordance with Finding of Fact "5" using the optional method in determining automobile expense.

B. That petitioners have failed to establish that they were entitled to a greater amount in contributions during the years at issue than allowed by the Income Tax Bureau.

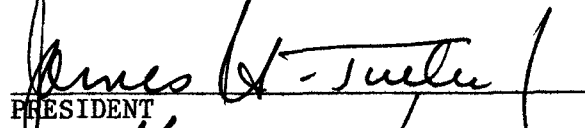
C. That the petition of Claude W. Booth and Ruth L. Booth is granted to the extent provided in Conclusion of Law "A", supra; and that said petition is in all other respects denied.

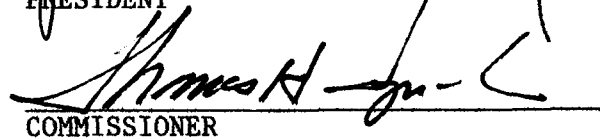
D. That the Audit Division is hereby directed to modify the notices of deficiency dated April 12, 1974 to be consistent with the decision rendered herein.

DATED: Albany, New York

JUN 19 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER