

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jeremiah H. Creedon :
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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Jeremiah H. Creedon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jeremiah H. Creedon
401 E. 65th St.
New York, NY 10021

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
25th day of September, 1981.

Cornie A. Hagelund

J. Vredenburg

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

September 25, 1981

Jeremiah H. Creedon
401 E. 65th St.
New York, NY 10021

Dear Mr. Creedon:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JEREMIAH H. CREEDON	:	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, Jeremiah H. Creedon, 401 East 65th Street, New York, New York 10021, 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. 22946).

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 February 26, 1981 at 2:45 P.M. Petitioner Jeremiah H. Creedon appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a gasoline tax deduction of \$240.00 and miscellaneous deductions of \$2,535.00.

FINDINGS OF FACT

1. Petitioner, Jeremiah H. Creedon timely filed a New York State Income Tax Resident Return for the year 1974, on which he reported itemized deductions of \$5,917.00 and three exemptions.

2. On April 4, 1978 the Audit Division issued a Notice of Deficiency for \$500.92, plus interest, along with an explanatory Statement of Audit Changes, on which two exemptions were disallowed and the standard deduction of \$2,000.00

was allowed in lieu of itemized deductions claimed. Accordingly, the aforementioned changes resulted in adjustments, summarized as follows:

<u>ITEM</u>	<u>CLAIMED</u>	<u>ALLOWED</u>	<u>ADJUSTMENT</u>
Exemptions	\$1,950.00	\$ 650.00	\$1,300.00
Interest Expense	559.00	-0-	559.00
Taxes - Gasoline	240.00	-0-	240.00
Misc. Deductions	2,535.00	-0-	2,535.00
State and Local Tax Modification	-0-	1,497.00	1,497.00
Balance of Itemized Deductions	1,086.00	-0-	1,086.00
Standard Deduction	<u>-0-</u>	<u>2,000.00</u>	<u>(2,000.00)</u>
Net Adjustment			<u>\$5,217.00</u>

3. Petitioner conceded the two exemptions disallowed and the state and local tax modification of \$1,497.00. The Audit Division conceded interest expenses of \$559.00 and a gasoline tax of \$132.00. Accordingly, these items are not at issue, except for the remaining balance of the gasoline tax of \$108.00, as well as the miscellaneous deductions.

4. Petitioner computed the gasoline tax deduction based on his contention that he drove 20,000 miles, received ten miles per gallon, and paid 8 cents per gallon in New York State gasoline tax and 4 cents per gallon in "New York City gasoline tax", or a total of 12 cents per gallon in gasoline taxes. The Audit Division computed the gasoline tax of \$132.00 for 20,000 miles based on gasoline tax tables issued by the Internal Revenue Service, and pointed out that New York City did not impose a gasoline tax in 1974.

5. The miscellaneous deductions claimed by petitioner consisted of:

Legal Fees	\$ 500.00
Home Office	1,100.00
Safe Deposit Box	20.00
Travel Expense	320.00
Meals, Lodging and Auto Rental	349.00
Entertainment	148.00
Meals and Drinks	98.00
	<u>\$2,535.00</u>

The fee of \$20.00 for the rental of a safe deposit box, and the expense of \$98.00 for meals and drinks were conceded by the Audit Division and are not at issue.

6. Petitioner contended that he paid \$1,300.00 in legal fees involving a legal separation from his former wife. He further contended that \$500.00 of the total amount paid was for tax advice. No documentary evidence was submitted supporting petitioner's contentions.

7. Petitioner was an adjunct assistant professor at Pace University during the year 1974 and worked at home to prepare lectures. In addition, petitioner was employed by "American Home Products" during the year 1974 and worked weekends. However, during the weekends the building was not heated in the winter, or air-conditioned in the summer, therefore, petitioner worked at home. Petitioner resided in a studio apartment where he maintained an 8' x 10' area as a home office. Petitioner contended that he actually utilized 61 percent of the studio apartment as a home office, but deducted instead 25 percent of his annual rent, or \$700.00, plus depreciation of \$400.00 for office equipment. No documentary evidence was submitted by petitioner indicating that petitioner's work at home was a condition of employment, or that it was an "ordinary and necessary" expense of his employment and/or occupation. In

addition, no bills, receipts, or other documentary evidence was submitted for the office equipment depreciated.

8. Sometime during the year 1974, petitioner terminated his activities as a salaried employee and traveled to Florida to investigate job, business and real estate opportunities. In this endeavor, petitioner incurred travel expenses of \$320.00, and meals, lodging and auto rental expenses of \$349.00. In addition, petitioner incurred entertainment expenses of \$148.00 for the purpose of having business discussions with "professionals" in an effort to gain business and investment advice, as well as tax advice. Although petitioner contended that he maintained a "Log" of his activities during the year 1974, it was not available for examination.

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).

B. That petitioner Jeremiah H. Creedon has failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, in establishing that he was entitled, within the purview of the Internal Revenue Code, and Article 22 of the Tax Law, to deductions and exemptions greater than those allowed and/or conceded by the Audit Division.

C. That the petition of Jeremiah H. Creedon is granted to the extent conceded by the Audit Division; to wit, interest expenses of \$559.00, gasoline taxes of \$132.00, a safe deposit fee of \$20.00, and meals and drinks of \$98.00. However, the aforementioned itemized deductions granted of \$809.00, along with the remaining balance of New York itemized deductions of \$1,086.00, result in

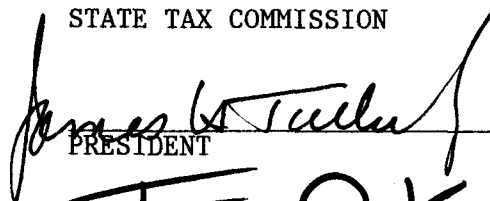
total New York itemized deductions of \$1,895.00. Therefore, the standard deduction of \$2,000.00 is granted, in lieu of the New York itemized deductions of \$1,895.00, which will result in the same net adjustment of \$5,217.00. (See Finding of Fact "2".)

D. That the petition of Jeremiah H. Creedon is denied and the Notice of Deficiency issued April 4, 1978 is sustained, together with such additional interest as may be lawfully owing.

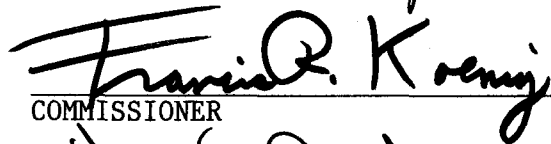
DATED: Albany, New York

SEP 25 1981

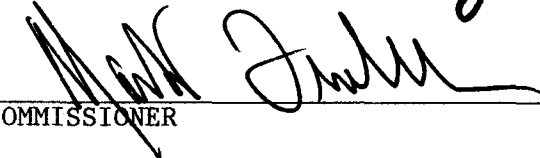
STATE TAX COMMISSION



PRESIDENT



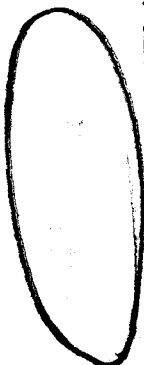
COMMISSIONER



COMMISSIONER

TA 26 (9-79)

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



Jeremiah H. Creedon
401 E. 65th St.
New York, NY 10021

CLAIM CHECK
NO.

OHOLD

DATE

9/30/81
1ST NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3849-A
May 1979

OCT 2 1981

TAX APPEALS BUREAU

RECEIVED

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

September 25, 1981

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DATED: Albany, New York

25 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER