

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Charles E. McCarthy :
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 :
1968.

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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Charles E. McCarthy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles E. McCarthy
c/o David J. Dwyer, Jr.
365 Bloomfield Ave.
Verona, NJ 07042

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
2nd day of October, 1981.

James A. Hagelund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Charles E. McCarthy :
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 :
1968.

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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon David J. Dwyer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David J. Dwyer
P.O. Box 183
Montclair, NY 07042

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
2nd day of October, 1981.

Carrie P. Haglund

J. Vredenburg

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

October 2, 1981

Charles E. McCarthy
c/o David J. Dwyer, Jr.
365 Bloomfield Ave.
Verona, NJ 07042

Dear Mr. McCarthy:

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,

Kathy Pfaffenbach

STATE TAX COMMISSION

cc: Petitioner's Representative
David J. Dwyer
P.O. Box 183
Montclair, NY 07042
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CHARLES E. McCARTHY	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1968.	:	

Petitioner, Charles E. McCarthy, 103 Mackay Drive, Tenafly, New Jersey 07670, 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 1968 (File No. 01229).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 24, 1976 at 11:10 A.M., and was continued before Edward L. Johnson, Hearing Officer, on November 19, 1976 at 11:00 A.M. Petitioner appeared by David J. Dwyer, Jr., CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Solomon Sies and Alexander Weiss, Esqs., of counsel).

ISSUES

I. Whether the Income Tax Bureau properly denied the nonresident petitioner's allocation of income earned both within and without New York State.

II. Whether petitioner provided sufficient substantiation to support the claimed deduction of business expenses on his 1968 income tax return.

FINDINGS OF FACT

1. Petitioner, Charles E. McCarthy, timely filed a New York State Income Tax Nonresident Return (Form IT-203) for 1968.

2. On July 26, 1971, the Income Tax Bureau issued a Notice of Deficiency to petitioner for tax due of \$6,015.04, plus interest of \$822.86, for a total allegedly due of \$6,837.90. A Statement of Audit Changes issued on the same date detailed the Income Tax Bureau's disallowance of petitioner's allocation of income, and of petitioner's claimed business expenses for travel and entertainment of \$18,459.37.

3. On September 16, 1971, Charles E. McCarthy filed a petition for redetermination of a deficiency or for refund of personal income tax for 1968.

4. Petitioner was in charge of the sales of Leath, McCarthy & Maynard, Inc., a manufacturer of nylon hosiery, the factory and principal office of which were located in Burlington, North Carolina. Mr. Leath operated the manufacturing plant. He was an equal stockholder with McCarthy, while Maynard was a minority stockholder. Petitioner was not an officer of the corporation.

Lemco Mills, Inc. was a subsidiary corporation, which also had its plant and offices in Burlington, North Carolina. It manufactured shirts for J.C. Penney Co. and all of its sales were made in New York State.

5. Petitioner travelled throughout the United States. According to his representatives, he was paid a salary of \$75,000.00 per year, plus an allowance of \$15,000.00 for travelling and entertainment expenses. Two wage and tax statements were attached to his New York State return. One statement from Leath, McCarthy and Maynard, Inc. showed \$70,000.00 in wages and deductions for FICA and withholding taxes. The other statement from Lemco Mills, Inc. indicated \$20,000.00 in wages and deductions for FICA and withholding taxes. Petitioner was not required to account for the \$15,000.00 expense account, but he was required to pay his own expenses above \$15,000.00.

6. Leath, McCarthy & Maynard, Inc. submitted a letter stating the dates and places petitioner worked outside New York State during 1968, which from its records, purportedly totalled 88 days. Petitioner's representative submitted a letter stating the dates and places petitioner worked outside New York State during 1968, which from petitioner's daily dairy, purportedly totalled 87 days. Several days were listed as "Upper Montclair Country Club". Neither schedule indicated the nature of duties performed on these days.

7. Petitioner did not personally appear at the formal hearing to testify. His certified public accountant appeared and submitted the daily diary. He admitted he could not read the diary. The entries were for the most part illegible; it did not show which appointments were business or personal. A comparison of the diary with both of the schedules and with various airline tickets submitted by petitioner's representative disclosed discrepancies; i.e., the diary indicated petitioner was in Europe from March 4th to March 15th, both schedules indicated petitioner was in Newark on March 8th and on March 11th and 12th; the diary appeared to indicate petitioner was in Burlington on March 25th and 26th, neither schedule listed either day as worked outside New York State and three of the airline tickets indicated flights on March 25th from Newark to Greensboro and on March 26th from Charlotte, North Carolina to Washington, D.C. and March 26th from Washington, D.C. to Newark; the diary indicated July 5th, a Friday, as a holiday and both schedules indicated petitioner worked in Newark on July 5th.

8. Cancelled checks were submitted covering expenditures made for air fares, auto rentals, entertainment, restaurants, hotels, athletic and country clubs. Xerox copies of both sides of each check were submitted as an exhibit. The checks were in no meaningful order and no bills or receipts were submitted

to indicate whether the checks were for business or personal expenses. There was documentation to indicate the amount, time and place, business purposes and business relationship of the expenses claimed. Some of the checks submitted were for expenses petitioner did not claim.

CONCLUSIONS OF LAW

A. That while petitioner was required by his employers to work in and out of New York State, he failed to sustain the burden of proof required under section 689(e) of the Tax Law to substantiate the actual number of days worked outside New York State and the nature of the duties performed outside New York State.

B. That section 274 of the Internal Revenue Code requires that travel, entertainment and gift expenses be adequately substantiated and directly related to or associated with business. A taxpayer is required to substantiate expenses by adequate records or sufficient evidence corroborating his own statements as to (1) amount, (2) time and place, (3) business purposes and, (4) business relationship of the entertained person (CF 63-4 Revenue Procedure 1963-1 CB 474). Petitioner did not testify at the hearing and his records were grossly inadequate to comply with the business expense requirements of section 274 of the Internal Revenue Code.

C. That the petition of Charles E. McCarthy is denied and the Notice of Deficiency issued July 26, 1971 is sustained.

DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION

James A. Miller
PRESIDENT

Mark J. Smith
COMMISSIONER

Francis R. Koenig
COMMISSIONER

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

October 2, 1981

Charles E. McCarthy
c/o David J. Dwyer, Jr.
365 Bloomfield Ave.
Verona, NJ 07042

Dear Mr. McCarthy:

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,

Kathy Pfraffenbach

STATE TAX COMMISSION

cc: Petitioner's Representative
David J. Dwyer
P.O. Box 183
Montclair, NY 07042
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES E. MCCARTHY

DECISION

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1968.

Petitioner, Charles E. McCarthy, 103 Mackay Drive, Tenafly, New Jersey 07670, 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 1968 (File No. 01229).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 24, 1976 at 11:10 A.M., and was continued before Edward L. Johnson, Hearing Officer, on November 19, 1976 at 11:00 A.M. Petitioner appeared by David J. Dwyer, Jr., CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Solomon Sies and Alexander Weiss, Esqs., of counsel).

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B. That section 274 of the Internal Revenue Code requires that travel, entertainment and gift expenses be adequately substantiated and directly related to or associated with business. A taxpayer is required to substantiate expenses by adequate records or sufficient evidence corroborating his own statements as to (1) amount, (2) time and place, (3) business purposes and, (4) business relationship of the entertained person (CF 63-4 Revenue Procedure 1963-1 CB 474). Petitioner did not testify at the hearing and his records were grossly inadequate to comply with the business expense requirements of section 274 of the Internal Revenue Code.

C. That the petition of Charles E. McCarthy is denied and the Notice of Deficiency issued July 26, 1971 is sustained.

DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION

James A. Tully
PRESIDENT

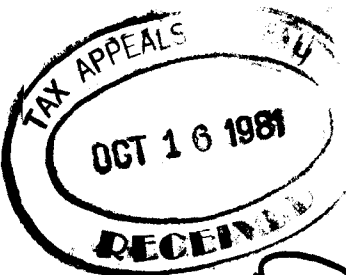
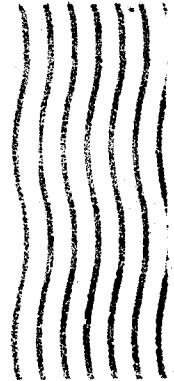
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Francis R. Koenig
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STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

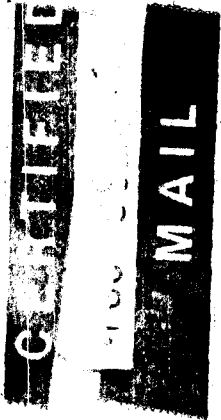


UNDELIVERABLE AS ADDRESSED
UNABLE TO FORWARD



REF
COPY

David J. Dwyer
P.O. Box 183
Montclair, NY 07042



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

October 2, 1981

Charles E. McCarthy
c/o David J. Dwyer, Jr.
365 Bloomfield Ave.
Verona, NJ 07042

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NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,
Kathy Pfaffenbach

STATE TAX COMMISSION

cc: Petitioner's Representative
David J. Dwyer
P.O. Box 183
Montclair, NY 07042
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
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CHARLES E. McCARTHY	:	DECISION
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C. That the petition of Charles E. McCarthy is denied and the Notice of Deficiency issued July 26, 1971 is sustained.

DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

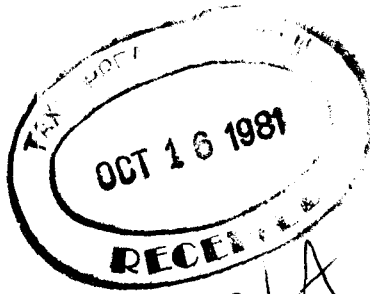
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

INSUFFICIENT ADDRESS



ANK

ATTEMPTED
NOT KNOWN



B/A
Sent

Charles E. McCarthy
c/o David J. Dwyer, Jr.
365 Bloomfield Ave.
Verona, NJ 07042

COPIES FILED
OCT 16 1981
FBI - NEW YORK

MAIL