

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
James A. McGraw III

:

:

: 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 5th day of June, 1981, he served the within notice of Decision by certified mail upon James A. McGraw III, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James A. McGraw III  
1160 Third Ave.  
New York, NY 10048

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  
5th day of June, 1981.

*Carrie A. Haglund*

*Jay Vredenburg*

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

June 5, 1981

James A. McGraw III  
1160 Third Ave.  
New York, NY 10048

Dear Mr. McGraw:

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

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JAMES A. MC GRAW III	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	

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Petitioner, James A. McGraw III, 1160 3rd Avenue, New York, New York, 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. 20544).

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 October 20, 1980 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner is properly entitled to claim miscellaneous deductions totaling \$10,944.18 and an adjustment to income for employee business expenses of \$850.00.

FINDINGS OF FACT

1. Petitioner, James A. McGraw III, timely filed a New York State Income Tax Resident Return for the year 1974 whereon he claimed miscellaneous itemized deductions totaling \$10,944.18. Said sum was comprised of five distinct deductions claimed as follows: home office, \$3,195.25; trip to settle estate, \$1,903.78; financial subscriptions, \$2,112.93; un-reimbursed business expenses, \$1,332.27; and publications, \$2,400.00 (note \$.05 error in addition). Addi-

tionally, petitioner claimed an adjustment to income for employee business expenses of \$850.00.

2. On September 30, 1975, the Audit Division issued a Statement of Audit Changes to petitioner wherein, as a result of audit, his claimed miscellaneous itemized deductions for 1974 were disallowed in full, with the exception of financial subscriptions, which was allowed in an amount greater than that claimed on his return. Also, his claimed adjustment to income for employee business expenses of \$850.00 was fully disallowed. Additionally, a modification adjustment of \$3,974.00 was made reducing petitioner's Federal itemized deductions pursuant to section 615(c)(1) of the Tax Law, but since said adjustment was not contested by petitioner, it is therefore not at issue herein. Accordingly, a Notice of Deficiency was issued against petitioner on January 24, 1977 asserting additional personal income tax of \$2,019.19, plus interest of \$305.18, for a total due of \$2,324.37.

3. On February 13, 1978, the Internal Revenue Service asserted a deficiency against petitioner for 1974. Review of the Federal Report of Individual Income Tax Examination Changes revealed that the Federal adjustments made were identical to those per Statement of Audit Changes, with the exception of the section 615(c)(1) modification adjustment, which is applicable solely for New York State purposes.

4. On December 12, 1979, the Internal Revenue Service issued a revised Report of Individual Income Tax Audit Changes for 1974 whereon, as a result of audit, the previously stated adjustments were modified. During the hearing, petitioner proposed, and the Audit Division accepted, the final Federal adjustments as being correct. The net adjustments reflected in said document were as follows:

	<u>Claimed</u>	<u>Allowed</u>	<u>Adjustment</u>
Home Office	\$3,195.25	\$1,238.44	\$1,956.81
Trip to settle estate	1,903.78	1,067.24	836.54
Financial subscriptions	2,112.93	3,160.76	(1,047.83)
Unreimbursed business expenses	1,332.27	3,274.00	(1,941.73)
Publications	2,400.00	-0-	2,400.00
Employee business expenses	850.00	850.00	-0-
TOTAL			<u>\$2,203.79</u>

CONCLUSIONS OF LAW

A. That petitioner, James A. McGraw III, is properly entitled to miscellaneous deductions and an adjustment to income for employee business expenses as specified in the "allowed" column in Finding of Fact "4", supra.

B. That the modification adjustment of \$3,974.00 pursuant to section 615(c)(1) of the Tax Law is hereby sustained.

C. That the petition of James A. McGraw III is granted to the extent provided in Conclusion of Law "A" supra, and that said petition is, in all other respects, denied.

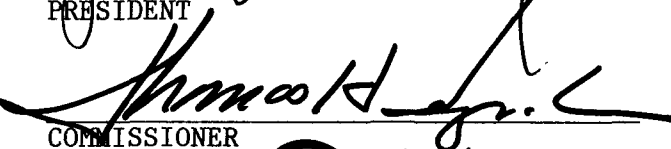
D. That the Audit Division is hereby directed to modify the Notice of Deficiency dated January 24, 1977 to be consistent with the decision rendered herein.

DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER