

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Carl E. & Rosemarie H. Podwoski :
: 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 :
1973

State of New York
County of Albany

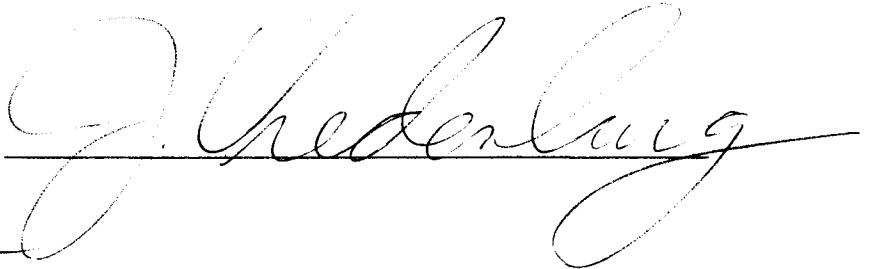
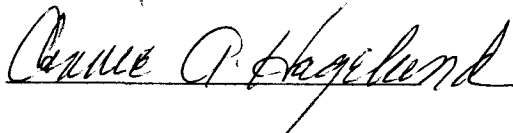
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of June, 1981, he served the within notice of by certified mail upon Carl E. & Rosemarie H. Podwoski, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carl E. & Rosemarie H. Podwoski
337 1st St.
Brooklyn, NY 11215

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
26th day of June, 1981.

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

June 26, 1981

Carl E. & Rosemarie H. Podwoski
337 1st St.
Brooklyn, NY 11215

Dear Mr. & Mrs. Podwoski:

Please take notice of the of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 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 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 :
CARL E. PODWOSKI and ROSEMARIE H. PODWOSKI : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1973. :

Petitioners, Carl E. Podwoski and Rosemarie H. Podwoski, 337 First Street, Brooklyn, New York 11215, 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 1973 (File No. 18291).

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 July 24, 1980 and December 18, 1980. Petitioner Carl E. Podwoski appeared pro se and for his wife, petitioner Rosemarie H. Podwoski. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioners are entitled to additional itemized deductions of \$713.00.

FINDINGS OF FACT

1. Petitioners, Carl E. Podwoski and Rosemarie H. Podwoski, timely filed a joint New York State Income Tax Resident Return for 1973, on which total New York income was reported in the sum of \$22,550.00.

2. On January 24, 1977, the Audit Division issued a Notice of Deficiency for \$98.64, plus interest, along with an explanatory Statement of Audit Changes, on which total New York income was increased from \$22,550.00 to \$23,447.46,

based on information submitted by the Internal Revenue Service. Petitioners responded to the deficiency by indicating that they indeed failed to report \$897.00 in income, but that they also failed to claim \$60.00 in medical expenses and \$713.00 in miscellaneous expenses. Accordingly, they submitted a check for \$17.00 for additional personal income tax due of \$14.00 plus interest. The Audit Division did not accept their explanation, but deposited the remittance of \$17.00 and applied to to the outstanding deficiency.

3. On April 4, 1979, the Audit Division received an amended New York State Income Tax Resident Return for 1973 from petitioners, Carl E. Podwoski and Rosemarie H. Podwoski, on which total New York income was reported in the sum of \$23,447.00 and New York itemized deductions were increased from \$2,199.75 to \$2,923.00.

4. At the hearing of December 18, 1980, petitioner Carl E. Podwoski submitted a handwritten schedule for the following miscellaneous deductions:

Financial Publications	\$ 93.00
Home Office	620.00
TOTAL.....	<u>\$713.00</u>

Petitioner Carl E. Podwoski argued that these expenses were attributable to his income in stocks and bonds. However, no bills, checks, receipts or other documentary evidence was submitted supporting the aforementioned expenses of \$713.00.

CONCLUSIONS OF LAW

A. That petitioners, Carl E. Podwoski and Rosemarie H. Podwoski, have failed to sustain the burden of proof as required by section 689(e) of the Tax Law in establishing that they were entitled to additional itemized deductions of \$713.00.

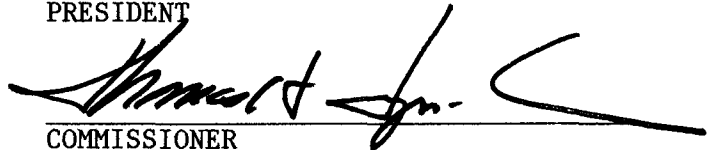
B. That the petition of Carl E. Podwoski and Rosemarie H. Podwoski is denied and the Notice of Deficiency issued January 24, 1977 is sustained, together with such additional interest as may be lawfully due, taking into consideration the \$17.00 payment previously remitted and applied to the deficiency.

DATED: Albany, New York

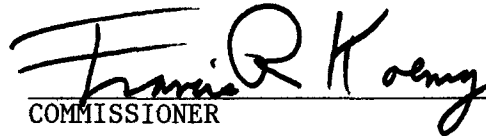
STATE TAX COMMISSION

JUN 26 1981

PRESIDENT



COMMISSIONER



COMMISSIONER

I dissent.

