

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard & Jo Ann Pound, Sr. :

: 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 :
1975.

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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Bernard & Jo Ann Pound, Sr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard & Jo Ann Pound, Sr.
15 Morningside Dr.
Middletown, NY 10940

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
6th day of November, 1981.

Cornie A. Higeland

J. Vredenburg

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

November 6, 1981

Bernard & Jo Ann Pound, Sr.
15 Morningside Dr.
Middletown, NY 10940

Dear Mr. & Mrs. Pound:

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	:	
BERNARD B. POUND, SR. and JOANN POUND	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioners Bernard B. Pound, Sr. and JoAnn Pound, 15 Morningside Drive, Middletown, New York 10940, 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 1975 (File No. 21503).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 18, 1981 at 1:15 P.M. Petitioner Bernard B. Pound, Sr. appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

I. Whether transportation expenses may be deducted by petitioner Bernard Pound, a New York City policeman, who uses his car for commutation purposes and also transports a firearm to the job site.

II. Whether petitioners provided sufficient evidence to establish the deductions for "Entertainment, Travel and Auto Expense", "Contributions", "Interest Expense" and "Miscellaneous Deductions".

FINDINGS OF FACT

1. Petitioners, Bernard B. Pound, Sr. and JoAnn Pound, timely filed a New York State Income Tax Resident Return for 1975.

2. On December 19, 1977, the Audit Division issued a Notice of Deficiency in the sum of \$1,019.04 for 1975, along with an explanatory Statement of Audit Changes which itemized its determination as follows:

Since you have not replied to our letter dated April 20, 1977 the items below are disallowed as unsubstantiated.

Since your remaining allowable itemized deductions are less than the standard deduction, the standard deduction is allowed in lieu of itemized deductions claimed.

Your N.Y. State tax refund is not taxable on your N.Y. State return. An adjustment is shown below.

<u>ITEM</u>	<u>AMOUNT REPORTED ON RETURN</u>	<u>CORRECTED AMOUNT</u>	<u>ADJUSTMENT</u>
Entertainment, Travel & Auto Expenses	\$ 4,373.00	\$ -0-	\$4,373.00
Contributions	670.00	-0-	670.00
Interest Expenses	3,514.72	-0-	3,514.72
Miscellaneous Deductions	650.00	-0-	650.00
Balance of Itemized Deductions	1,934.75	-0-	1,934.75
Standard Deduction	-0-	(2,000.00)	(2,000.00)
New York State Refund			(557.95)
		TOTAL ADJUSTMENT	<u>\$8,584.52</u>

3. At a pre-hearing conference the following adjustments were made based on amounts substantiated:

<u>ITEM</u>	<u>AMOUNT REPORTED ON RETURN</u>	<u>CORRECTED AMOUNT</u>	<u>ADJUSTMENT</u>
Contributions	\$ 670.00	\$ -0-	\$ 670.00
Interest Expense	3,514.72	2,617.84	896.88
Miscellaneous Deductions	650.00	-0-	650.00
Travel & Auto Expenses	4,373.00	-0-	4,373.00
N.Y. State Tax Refund	-0-	557.95	(557.95)
		TOTAL ADJUSTMENT	<u>\$6,031.93</u>

4. At the hearing the Audit Division stipulated to the following corrected amounts:

Contributions	\$100.00
Miscellaneous Deductions	\$530.00

Petitioner Bernard Pound was granted an extension of time in which to submit documentary evidence with respect to all adjustments made on the Notice of Deficiency ; however, no documentary evidence was submitted.

5. Petitioner Bernard Pound is a New York City policeman who lived in Middletown, New York in 1975. In order to reach his place of work by public transportation over the normal route, he would have to pass through New Jersey. He is required to have the gun in his possession at all times. Because of this requirement, he must transport his firearm daily to and from his place of work. New Jersey law specifically prohibits any individual who is not a New Jersey Police Officer and who is not otherwise licensed in the State of New Jersey from carrying a firearm while traveling on public transportation. New Jersey Department of Law and Public Safety as a rule rejects gun permits by out-of-state police officers. Petitioner did not present any evidence to show that he made application for a New Jersey gun permit.

6. Petitioner Bernard Pound contended inasmuch as New Jersey State Law prohibits the carrying of firearms on public transportation, and inasmuch as there is no other form of transportation available, he was forced to use his auto to get to work. He claims this deduction based on the William Addie ruling of the Internal Revenue Service which he contends is parallel to his situation.

7. The petitioner claimed the following travel expenses on his return:

15,000 miles at 15¢	\$2,250.00
16,000 miles at 10¢	1,600.00
Parking fees and tolls	523.00
TOTAL TRAVELING EXPENSES	<u>\$4,373.00</u>

The expense is based on the petitioner going, to and from his place of work, from his residence, two hundred twenty-five times during 1975. The petitioner did not subtract the cost of using public transportation in arriving at his travel expenses.

CONCLUSIONS OF LAW

A. That expenses incurred by the petitioner in using his automobile for commuting between his place of abode and his principal or regular place of work represents nondeductible commuting expenses within the scope of section 262 of the Internal Revenue Code, notwithstanding the fact that the automobile is also used to transport firearms used by petitioner in his work. The fact that the petitioner might have or would have used a less expensive mode of transportation if it had not been necessary to carry the firearm is immaterial since the employer did not cause the situation that gave rise to the expense. That the situation that gave rise to the expense was the petitioners living in Middletown, New York by reason of his own convenience rather than for the necessity of his employer. Accordingly the expenses are not employee business expenses within the meaning and intent of section 262 of the Internal Revenue Code.

B. That petitioners Bernard B. Pound, Sr. and JoAnne Pound, have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that they are entitled to deductions greater than those allowed by the Audit Division.

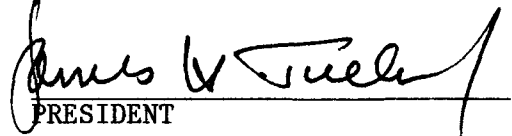
C. That the Audit Division is hereby directed to accordingly modify the Notice of Deficiency issued December 19, 1977 to the extent indicated in Finding of Fact "3" and "4"; and that, except as so granted the petition of Bernard B. Pound, Sr. and JoAnn Pound is in all other respects denied, that the

revised tax due shall be sustained, together with such additional interest as may be lawfully owing.

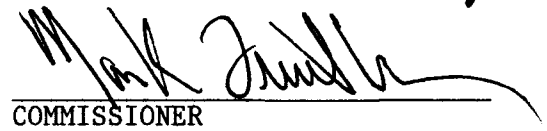
DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER