

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Robert F. Cade

:

:

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 :
1977.

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 March, 1982, he served the within notice of Decision by certified mail upon Robert F. Cade, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert F. Cade
816 Deal Rd., RD #2
Oakhurst, NJ 07712

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 March, 1982.

Annie A. Haglund

J. Vredenburg

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

March 26, 1982

Robert F. Cade
816 Deal Rd., RD #2
Oakhurst, NJ 07712

Dear Mr. Cade:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

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	:	
ROBERT F. CADE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

Petitioner, Robert F. Cade, 816 Deal Road, Oak Hurst, New Jersey 07712, 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 1977 (File No. 26065).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 18, 1981 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner for subject year incurred employee business expenses, and if so, were said expenses properly substantiated.

FINDINGS OF FACT

1. Petitioner, Robert F. Cade, and Harriet Cade, his wife, filed a New York State income tax resident return on which they computed their tax separately for 1977. Attached to said return was a "Schedule for Change of Resident Status" on which petitioner indicated his period of New York State residence was from January 1, 1977 through April 1, 1977 and July 1, 1977 through December 31, 1977. He allocated his income based on days worked within and without New York State.

2. On February 23, 1979, the Audit Division issued a Notice of Deficiency against petitioner, Robert F. Cade, asserting personal income tax of \$348.16 plus interest of \$35.38 for a total of \$373.54. The Notice of Deficiency was based on a Statement of Audit Changes, issued under date of November 16, 1978 which held that petitioner, Robert F. Cade's, temporary absence from New York State did not constitute a change of residence. Therefore, all of his income earned for the year at issue is taxable to New York State.

3. At the hearing, petitioner, Robert F. Cade, stipulated that for the subject year he was domiciled in New York, and, accordingly, his income was subject to New York State personal income tax without allocation.

4. At the hearing, petitioner for the first time raised the issue of unreimbursed employee business expenses. Petitioner contended that he incurred living expenses in connection with his temporary assignment to Alexandria, Virginia which exceeded the per diem allowance provided by his employer. In addition, petitioner further contended that he was not reimbursed by his employer for weekend travel to his home and for his return to Alexandria, Virginia.

Petitioner did not submit any documentation in support of his claimed employee business expenses.

5. Petitioner filed an individual income tax return as a part time resident of the State of Virginia for subject year on which he paid Virginia State tax of \$160.13.

At the hearing, the attorney for the Bureau stipulated that the tax paid to the State of Virginia in the amount of \$160.13 be considered in computing a credit against the personal income tax due New York State.

CONCLUSIONS OF LAW

A. That petitioner, Robert F. Cade, failed to show that the employee business expenses were ordinary and necessary. Moreover, petitioner failed to maintain proper records in support thereof [Treas. Reg. 1.162-17(d); T.D. 6630, 1963-1 C.B. 58; Treas. Reg. 1.274-5(a); T.D. 7226, 1973-1 C.B. 153].

That petitioner, Robert F. Cade, failed to sustain the burden of proof pursuant to the meaning and intent of section 689(e) of the Tax Law in establishing that he was entitled to employee business expenses.

B. That the Audit Division is hereby directed to modify the Notice of Deficiency dated February 23, 1979 to be consistent with Finding of Fact "5"; and that, except as so granted, the petition is in all other respects denied. The Notice of Deficiency, as hereby modified, is sustained, together with such interest as may be legally due.

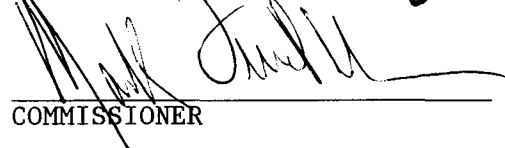
DATED: Albany, New York

MAR 26 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER