

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Fred R. Cataldo	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
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

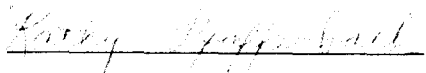
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1982, he served the within notice of Decision by certified mail upon Fred R. Cataldo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fred R. Cataldo
17 King Arthur Ct.
St. James, NY 11780

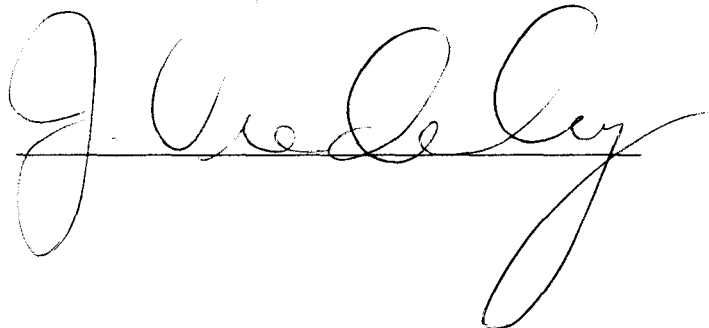
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
29th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 29, 1982

Fred R. Cataldo
17 King Arthur Ct.
St. James, NY 11780

Dear Mr. Cataldo:

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	:	
	:	
FRED R. CATALDO	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioner, Fred R. Cataldo, 17 King Arthur Court, St. James, New York 11780, 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. 19050).

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 March 23, 1982 at 2:00 P.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the Audit Division's disallowance of petitioner's claimed rental loss was proper.

II. Whether the Audit Division's adjustments to petitioner's claimed business expense deductions were proper.

FINDINGS OF FACT

1. Fred R. Cataldo (hereinafter petitioner) filed a New York State Combined Income Tax Return with his wife for the year 1974 whereon he reported a rental loss of \$10,034.80 and an adjustment to income for business expenses of \$8,524.75.

2. On July 29, 1976 the Audit Division issued a Statement of Audit Changes to petitioner wherein his claimed rental loss was disallowed in its entirety and business expenses were allowed only to the extent of \$1,135.72. Said adjustments were made based on petitioner's failure to substantiate such claimed deductions. Additionally, a statutory medical adjustment was made pursuant to section 213(a)(1) of the Internal Revenue Code based on the resulting increase to petitioner's adjusted gross income. Although this adjustment is not at issue herein, modification would be required based on any change to the aforestated contested adjustments. Accordingly, a Notice of Deficiency was issued against petitioner on May 23, 1977 asserting additional personal income tax of \$1,666.27, plus interest of ¹\$298.01, for a total due of \$1,964.28.

3. The loss at issue was claimed with respect to petitioner's rental property located at 90-94 West Main Street, Patchogue, New York. Such property was operated as a bar and grill.

4. Total rent of \$4,300.00 was reported as derived from said property. Depreciation was claimed of \$1,593.36. Other expenses attributable to such property were claimed as follows:

Real Estate Taxes	\$ 2,678.00
Mortgage Interest	7,081.44
Utilities	1,473.00
Insurance	1,434.00
Inspection	10.00
Legal	65.00
Total Other Expenses	<u>\$12,741.44</u>

5. Petitioner leased the property for \$650.00 per month. The low income reported was due to the fact that the tenant had defaulted on five month's rent

¹ Although the Notice of Deficiency lists interest asserted as \$208.01, the Statement of Audit Changes reports interest as \$298.01. Additionally, the total due, reduced by the tax deficiency, yields an amount for interest of \$298.01.

during 1974. In the latter part of 1974, the tenant was evicted. Said premises were not leased again until April, 1975.

6. Petitioner submitted documentation evidencing fuel expenditures of \$926.97. Although petitioner was given ample opportunity to submit documentation substantiating the balance of rental expenses claimed, he failed to do so (expenses were allowed to the extent of the rental receipts of \$4,300.00).

7. Business expenses claimed were with respect to petitioner's activities engaged in as a District Manager for Prudential Insurance Company. Such claimed expenses and the Audit Division's adjustments are outlined below.

	<u>CLAIMED</u>	<u>ALLOWED</u>	<u>ADJUSTMENT</u>
Auto Expense (28,703 business miles)	\$3,620.30	-0-	\$3,620.30
Auto Rental	556.00	-0-	556.00
Lunches and dinners	1,201.20	-0-	1,201.20
Gifts	83.40	\$ 83.40	-0-
Stationery and postage	217.97	217.97	-0-
Agent of the Month Awards	374.00	124.00	250.00
Telephone	445.00	-0-	445.00
Dues and subscriptions	204.30	204.30	-0-
Christmas party	991.00	991.00	-0-
Convention	831.58	-0-	831.58
	<u>\$8,524.75</u>	<u>\$1,620.67</u>	<u>\$6,904.08</u>
Less: Reimbursement		(484.95)	484.95
Total	<u>\$8,524.75</u>	<u>\$1,135.72</u>	<u>\$7,389.03</u>

8. Petitioner claimed he used a personally-owned Cadillac exclusively for business. He submitted auto repair receipts showing mileage at the beginning of 1974 of 83,093 and mileage at the end of 1974 of 10,261 (purporting to be 110,261), for a total mileage of 27,170. In addition to the Cadillac, petitioner owned a van and his wife also owned an automobile. Although one of said receipts indicated it was with respect to the Cadillac, the other had no such designation. No mileage was claimed as being attributed to personal use or commutation.

9. Petitioner submitted documentation evidencing car rental expenses of \$535.41. Such rental was made during a period when petitioner's auto was being repaired. He testified the rental car was used for business purposes only.

10. Petitioner submitted documentation evidencing his expenditure of \$324.31 for "agent of the month awards" paid to agents of his general agency.

11. Petitioner submitted checks evidencing payments to the New York Telephone Company during 1974 of \$364.37. The amount claimed on his return for this expense was after reduction of \$145.00, which was determined to be personal. No bills were submitted to substantiate the actual business use.

12. No acceptable documentary evidence was submitted with respect to expenses claimed for lunches and dinners or the convention. Although petitioner was allowed sufficient time subsequent to the hearing to submit a diary to support these expenses, he failed to do so.

CONCLUSIONS OF LAW

A. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he is properly entitled to a rental loss during the year at issue. Accordingly, the adjustment disallowing petitioner's claimed rental loss of \$10,034.80 is hereby sustained.

B. That petitioner's auto rental expense is allowed to the extent of \$535.41 as substantiated by the documentation submitted.

C. That petitioner's claimed expense for "agent of the month awards" is allowed to the extent of \$324.31 as substantiated.

D. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he is properly entitled to deductions for automobile expenses, lunches and dinners, telephone expenses

or convention expenses. Accordingly, the adjustments to these deductions are sustained.

E. That the medical expense adjustment is to be recomputed based on the decrease in adjusted gross income resulting from Conclusions of Law "B" and "C" supra.

F. That the petition of Fred R. Cataldo is granted to the extent provided in Conclusions of Law "B", "C" and "E" supra, and except as so granted, said petition is, in all other respects, denied.

G. That the Audit Division is hereby directed to modify the Notice of Deficiency dated May 23, 1977 to be consistent with the decision rendered herein.

DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION

Robert A. Boudard
ACTING PRESIDENT

Francis Q. Koenig
COMMISSIONER

Wallace J. Smith
COMMISSIONER