

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of

Arthur E. & Harriet Marini : 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 :  
1976.

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State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Arthur E. & Harriet Marini, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur E. & Harriet Marini  
117 Hillside Ave.  
Pearl River, NY 10965

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  
9th day of April, 1982.

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

April 9, 1982

Arthur E. & Harriet Marini  
117 Hillside Ave.  
Pearl River, NY 10965

Dear Mr. & Mrs. Marini:

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

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In the Matter of the Petition	:	
of	:	
ARTHUR E. MARINI and HARRIET MARINI	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1976.	:	

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Petitioners, Arthur E. Marini and Harriet Marini, 117 Hillside Avenue, Pearl River, New York 10965 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 1976 (File No. 28702).

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 June 17, 1981 at 9:15 A.M. Petitioner Arthur E. Marini appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether, and if so to what extent, petitioners are properly entitled to a deduction for transportation expenses.

FINDINGS OF FACT

1. Petitioners, Arthur E. Marini and Harriet Marini timely filed a joint New York State Income Tax Resident Return for the year 1976 whereon Arthur E. Marini (hereinafter petitioner) claimed an adjustment to gross income for automobile expenses of \$2,407.00.

2. On October 19, 1977, the Audit Division issued a Statement of Audit Changes to petitioners wherein said automobile expenses were disallowed in full

on the basis that "additional transportation costs were not incurred (in addition to ordinary commuting expenses) for transporting work implements". Accordingly, a Notice of Deficiency was issued against petitioners on September 27, 1979 asserting additional personal income tax of \$262.94, plus interest of \$52.29, for a total due of \$315.23.

3. Petitioner's claimed automobile expense deduction is comprised of three categorically distinct expenses as follows:

- a. Expense attributable to excess mileage driven due to necessity of carrying revolver over mileage of shorter, more direct route,
- b. expense attributable to mileage driven while performing duties of employment, and
- c. expense attributable to mileage driven to and from an educational institution.

4. During the year at issue petitioner was employed by the New York City Police Department where he held the rank of Sergeant. Each working day he commuted from his residence in Rockland County, New York via his personal automobile, to his assigned precinct located in the Bronx, New York City.

5. As a police officer, petitioner was required by his employer to be armed at all times when in the City of New York. However, New Jersey, through which petitioner would travel if he commuted to work by driving over the most direct route or taking a bus, permits officers employed by governmental agencies outside the State of New Jersey to carry weapons in New Jersey only while engaged in official duties and upon prior notification to local police authorities. Since petitioner had not met these requirements he was prohibited from traveling through New Jersey. Since public transportation via New York roads exclusively was not available, petitioner commuted via his personal automobile.

6. Petitioner argued that he is entitled to a deduction for the excess expense he incurred in traveling by way of New York roads exclusively since such excess expense directly resulted from his employer's requirement that he be armed. The distance traveled by petitioner from his residence to his duty station was thirty one miles. The shorter, more direct New Jersey route was approximately twenty five miles. Petitioner worked two hundred twenty six tours during taxable year 1976.

7. With respect to expenses attributable to mileage driven while performing duties of his employment, petitioner submitted documentation evidencing his authority to use his personal automobile in the performance of official police duties. Additionally, he submitted a diary wherein entries were recorded noting the dates and destination for occasions where he used his personal automobile for police duties. However, no substantiation was submitted evidencing the actual mileage driven in connection with petitioner's police duties during the year at issue.

8. During 1976 petitioner attended Iona College in New Rochelle, New York. He attended morning sessions two days per week during the spring semester, and evening sessions four days per week during the summer session. Courses taken by petitioner related to police work. No documentation was submitted by petitioner with respect to actual mileage driven for this purpose.

#### CONCLUSIONS OF LAW

A. That Internal Revenue Service Revenue Ruling 75-380 (C.B. 75-2, 59) provides that:

"A taxpayer who can establish that transportation costs were incurred in addition to ordinary commuting expenses, and that such additional costs are attributable solely to the necessity of transporting work implements to and from work, will be entitled to deduct such additional costs under section 162 of the Code. A reasonable and feasible method of allocation of transportation costs is to compute the portion of the cost of transporting the work implements

by the mode of transportation used in excess of the cost of commuting by the same mode of transportation without the work implements".

B. That in order to qualify for a deduction of transportation expenses under the general provisions of section 162(a) of the Internal Revenue Code, petitioner must demonstrate that such expenses were directly connected with the pursuit of his employer's business and were not commuting expenses incurred solely for personal reasons. Petitioner has not met this burden. It is true that petitioner would have incurred no additional expenses but for his employer's requirement that he carry his service revolver while within the city of New York. However, this requirement presented difficulties for petitioner only because he had chosen to live near New Jersey so that the most direct routes to his place of employment, either by automobile or public transportation, required travel through that state. The New York City Police Department required only that petitioner be armed when inside the city. The petitioner's added costs in meeting this requirement were due to his choice of a personal residence in Rockland County and New Jersey law which prevented him from carrying his revolver through that State. These added costs were wholly unnecessary, and inappropriate for the conduct of the New York Police Department's law enforcement duties within the City of New York (Dennis McCabe, 76 TC 876 (1981)). Accordingly, petitioners added expenses in avoiding travel through New Jersey are personal in nature and no deduction for such expenses can be allowed.

C. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show the mileage driven while performing employment duties and the mileage driven to and from Iona College. Accordingly, no deduction for such expenses can be allowed.


D. That the petition of Arthur E. Marini and Harriet Marini is denied and the Notice of Deficiency dated September 27, 1979 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER