

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Rocco Spaccio :
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. :

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 October, 1982, he served the within notice of Decision by certified mail upon Rocco Spaccio, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rocco Spaccio
3714 Glendale Dr.
Horseheads, NY 14845

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 October, 1982.

Annice R. Haglund

AUTHORIZED BY APPOINTMENT
GARY T. GAGLIARDI TO SIGN
SECTION 174

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

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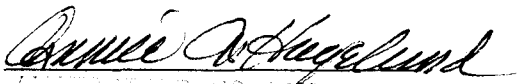
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Walter R. Conlin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

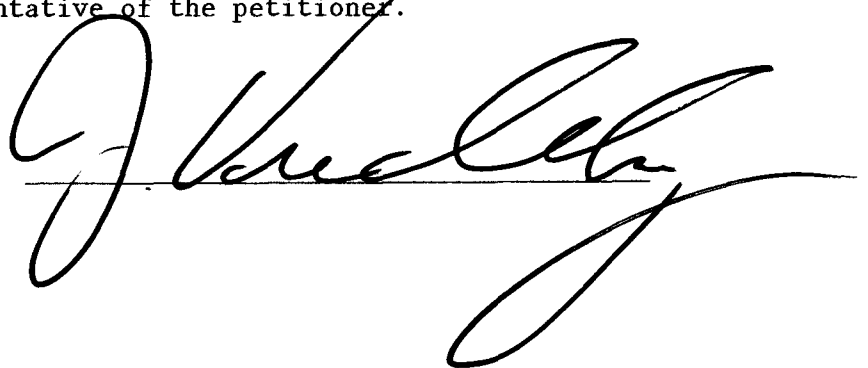
Walter R. Conlin
P.O. Box 1386
Corning, NY 14830

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
6th day of October, 1982.


JAMES W. HEGELAND
CLERK OF THE COMPTROLLER
OF THE STATE OF NEW YORK
OFFICE OF THE CLERK
ALBANY, NEW YORK



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

October 6, 1982

Rocco Spaccio
3714 Glendale Dr.
Horseheads, NY 14845

Dear Mr. Spaccio:

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
Walter R. Conlin
P.O. Box 1386
Corning, NY 14830
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROCCO SPACCIO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1976.	:	

Petitioner, Rocco Spaccio, 3714 Glendale Drive, Horseheads, New York 14845, 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. 24978).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York, on September 21, 1981 at 1:15 P.M. Petitioner Rocco Spaccio appeared with Walter R. Conlin, P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

ISSUE

Whether, and if so to what extent, petitioner is properly entitled to deductions for employee business expenses, medical expenses and a casualty loss for the year 1976.

FINDINGS OF FACT

1. Petitioner, Rocco Spaccio, and his wife Linda Spaccio, timely filed a combined New York State Income Tax Resident Return for the year 1976.

2. On December 14, 1977, the Audit Division issued a Statement of Audit Changes to petitioner wherein his deductions claimed for employee business expenses of \$16,688.00, medical expenses of \$1,231.00 and a casualty loss of

\$220.00, were disallowed in full since petitioner failed to appear for a scheduled audit. Accordingly, a Notice of Deficiency was issued against petitioner on April 12, 1978 asserting additional personal income tax of \$2,788.89, plus interest of \$234.69, for a total due of \$3,023.58.

3. At the hearing, the Audit Division and petitioner stipulated that one half of the insurance premium for medical care of \$150.00 and \$1,450.18 of medical expenses prior to the three percent limitation were allowable deductions. All other medical expenses are still at issue. The petitioner presented documentation for two humidifiers and a water conditioner which he contended were purchased for medical reasons.

4. Petitioner contended that on December 10, 1976 he had a casualty loss when he slipped and fell on the ice while carrying a heavy business machine which belonged to his employer. Petitioner contended that he crushed his little finger on his right hand resulting in blood on his topcoat, torn pants, and a crushed watch and that the suit and topcoat had been purchased within the preceding three months and the watch within eighteen months. The petitioner presented no documentation to substantiate the market value of the property lost and his testimony did not coincide with his written statement presented at the hearing.

5. For an "office in the home" the petitioner claimed depreciation of \$805.90, utilities of \$275.60, insurance of \$97.50 and drapes and pictures of \$350.00, for a total of \$1,529.00. The "office in the home" included a room, storage area and garage. Petitioner worked for Duplicating Products Company as an outside salesman. With respect to the room used by petitioner for business, it contained a desk, chair, typewriter, telephone and file cabinet, and was used by petitioner to plan his schedule, prepare correspondence and review

paperwork. During the hearing, the Audit Division conceded that they did not question the amount claimed, but took the position that the petitioner does not qualify for a deduction of this nature. Petitioner did not show that the home office was regularly and exclusively used for business purposes. Nor did the petitioner show that the home office was for the convenience of his employer and not just appropriate and helpful in his job.

6. Petitioner claimed a deduction for office supplies of \$1,489.70 for which he provided a letter from a law firm for the purchase of some office supplies.

7. At the hearing the petitioner conceded to the disallowance for; telephone expenses of \$840.55, out of town lodging and meals of \$1,202.60, business luncheons of \$1,688.35, business entertaining of \$3,389.50 and business mileage of \$4,523.00.

CONCLUSIONS OF LAW

A. That petitioner is properly entitled to a deduction for medical expenses in the amount of one half of the insurance premium for medical care of \$150.00 and \$1,450.18 of medical expenses prior to the three percent limitation. That petitioner has failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, in establishing that he was entitled to a deduction greater than those granted.

B. That any loss arising from a casualty is allowed as a deduction, providing the petitioner establishes a casualty occurred, and if so, the amount of the loss. Petitioner has not established the fact that a casualty actually occurred. Petitioner has also failed to produce any evidence from which the value of the property or its cost basis can be determined. Since the requirement

to prove occurrence and value are essential elements of petitioner's case, and no such proof being presented, the deduction is disallowed.

C. That the disallowance of \$1,529.00 for the petitioner's claimed deduction of an "office in the home" is sustained in accordance with the meaning and intent of section 162(a) of the Internal Revenue Code.

D. That deductions claimed for "office supplies" of \$1,489.70 are denied in full since petitioner has not sustained his burden of proof required under section 689(e) of the Tax Law to show to what extent, if any, that he was properly entitled to such deduction.

E. That at the hearing the petitioner conceded to the disallowance of the remaining business expenses claimed. Accordingly, said adjustments are sustained.

F. That the Petition of Rocco Spaccio is granted to the extent provided in Conclusion of Law "A" supra and that said petition is, in all other respects, denied. That the Audit Division is hereby directed to modify the Notice of Deficiency dated April 12, 1978 to be consistent with the decision rendered herein.

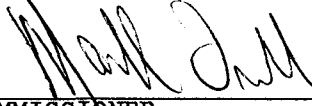
DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER