

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Harry L. Warren :
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

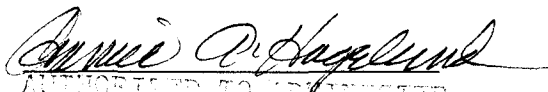
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Harry L. Warren, the petitioner in the within proceeding,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

Harry L. Warren
50 Gillette Ave.
Bayport, NY 11705

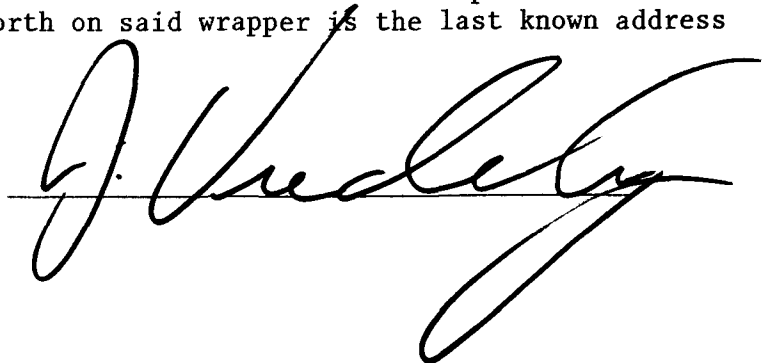
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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.



ATTESTED TO /
CLERK /
SECTION 274



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

October 6, 1982

Harry L. Warren
50 Gillette Ave.
Bayport, NY 11705

Dear Mr. Warren:

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
HARRY L. WARREN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1976.

DECISION

Petitioner, Harry L. Warren, 50 Gillette Avenue, Bayport, New York 11705, 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. 28351).

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 September 17, 1981 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner, Harry L. Warren, as a condition of his employment, is required to provide his own space and facilities for the performance of his duties, and therefore, may deduct expenses in connection therewith.

FINDINGS OF FACT

1. Petitioner, Harry L. Warren, and Jean D. Warren, his wife, filed separately on a combined New York State income tax resident return for subject year. On said return, petitioner Harry L. Warren deducted \$2,647.00 as business expenses in connection with an office maintained his home.

2. On August 2, 1979, the Audit Division issued a Notice of Deficiency against petitioner, Harry L. Warren, asserting personal income tax of \$415.89,

less a refund due Jean D. Warren of \$39.93, plus interest of \$73.80, for a total of \$449.76. The Notice was issued on the ground that the office maintained in petitioner's home was not his principal place of business, and, accordingly, expenses attributable thereto were disallowed in full. Additionally, other adjustments were made which are not at issue.

3. Petitioner is vice president of Alcap Electric Corporation (hereinafter "corporation"), a firm engaged in the electrical construction business. Petitioner is the chief operations officer of the corporation. His principal duties entail, inter alia, complete responsibility for procuring manpower, tools and equipment for all jobs in progress, and to keep track of any and all changes to ongoing jobs. These duties are performed by petitioner at the corporation's offices and/or in the field.

4. Petitioner's secondary duties are to figure and estimate jobs and job changes. Petitioner contends that these latter duties are involved and require as few distractions as possible. He further contends that the offices supplied him by the corporation were inadequate to accomplish these goals because of the many distractions he encountered.

5. In order to further his business activity, petitioner designed his home so that it would have an office with a separate entrance. Said room serves no other function but as an office where petitioner figures and estimates jobs and job changes.

6. Petitioner submitted into evidence an unattested letter from his employer, which states, in relevant part, that petitioner's secondary duties will make him solely responsible for estimating and procuring new jobs. These duties are to be performed after normal working hours and on weekends, and at a place other than Alcap's office.

CONCLUSIONS OF LAW

A. That petitioner, Harry L. Warren, failed to establish that the expenses incurred for a portion of his residential property were ordinary and necessary, and required as a condition of his employment, and, accordingly, are not deductible as a business expense. That the incurrence of business expense at home must be required by the employer as a condition of employment in order to be deductible [Rev. Rul. 62-180, 1962-2 C.B. 52, see S.A. Bodzin, CA-4, 75-1 USTC 9190].

That the unattested letter from the employer does not mandate that petitioner use a portion of his home as a condition of employment, nor what specific functions he was to perform which would necessitate the use of a portion of his house.

B. That petitioner failed to sustain his burden of proof pursuant to section 689(e) of the Tax Law to show that he was entitled to claim as a deduction a portion of his residential property as a business expense.

C. That the petition of Harry L. Warren is denied and the Notice of Deficiency issued August 2, 1979 is sustained, together with such additional interest as may be legally due.

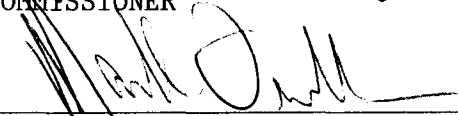
DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER