

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Juan Laurilla :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article(s) 22 of the Tax Law for the :
Years 1982 & 1983. :
_____ :

State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 14th day of November, 1986, he/she served the within notice of Decision by certified mail upon Juan Laurilla the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Juan Laurilla
143 Yale St.
Amsterdam, NY 12010

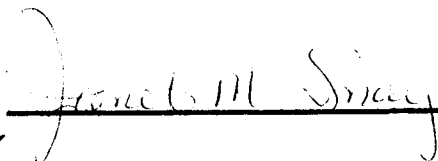
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
14th day of November, 1986.



Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

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for Redetermination of a Deficiency or Revision :
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Tax under Article(s) 22 of the Tax Law for the :
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_____:

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 14th day of November, 1986, he served the within notice of Decision by certified mail upon Richard J. Cordovano, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard J. Cordovano
63 W. Fulton St.
Gloversville, NY 12078

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
14th day of November, 1986.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

November 14, 1986

Juan Laurilla
143 Yale St.
Amsterdam, NY 12010

Dear Mr. Laurilla:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Richard J. Cordovano
63 W. Fulton St.
Gloversville, NY 12078

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JUAN LAURILLA

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1982 and 1983.

Petitioner, Juan Laurilla, 143 Yale Street, Amsterdam, New York 12010, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1982 and 1983 (File No. 61918).

A hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Building #9, W.A. Harriman State Office Campus, Albany, New York, on July 9, 1986 at 2:00 P.M. Petitioner appeared by Richard J. Cordovano, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner has substantiated entitlement to a greater automobile business expense deduction than the amount allowed by the Audit Division.

FINDINGS OF FACT

1. Petitioner, Juan Laurilla, and his wife Martha Laurilla, timely filed a joint New York State Income Tax Return (Form IT-201) for each of the years 1982 and 1983.¹

1 Martha Laurilla is not a party to this proceeding. Hence, all references to petitioner are references solely to Juan Laurilla.

2. Petitioner is a medical doctor, specializing as a urologist, and practices his profession in the Montgomery County area of New York State.

3. On or about November 21, 1984, an audit of petitioner's tax returns for the years 1981, 1982 and 1983 was commenced by the Audit Division.

4. On June 3, 1985, the Audit Division issued to petitioner a Notice of Deficiency asserting additional personal income tax due for the years 1982 and 1983 in the aggregate amount of \$1,339.76, plus interest. This asserted deficiency stemmed from the aforementioned audit.

5. A Statement of Personal Income Tax Audit Changes previously issued to petitioner on March 26, 1985, revealed that such deficiency was premised upon the Audit Division's disallowance of eighty-five percent of the total expenses claimed as deductible by petitioner based on business use of one of his four automobiles. In said statement the following adjustments were made:

<u>Explanation</u>	<u>1982</u>	<u>1983</u>
"Auto Expenses:	\$ 785.00	\$2,417.00
Auto Depreciation:	2,025.00	3,899.00
Insurance Disallowed:	<u>2,676.00</u>	<u>1,594.00</u>
Net Adjustment	<u>\$5,486.00</u>	<u>\$7,910.00"</u>

6. During the period in question, petitioner owned four automobiles, all of which were garaged at petitioner's home. Petitioner designated the "best" (presumably the newest) of the four automobiles as a business vehicle, and paid all expenses for said vehicle from his business checking account. On his tax returns for the subject years, petitioner deducted one hundred percent of the operating expenses (including depreciation and insurance) associated with the designated business automobile, upon the position that such vehicle was used entirely for business purposes.

7. Petitioner maintains two offices, one in Amsterdam and one in Canajoharie (approximately fifteen to twenty miles from Amsterdam), where he regularly

meets and consults with patients. Part of petitioner's practice also includes performing surgery at three different hospitals, namely Amsterdam Memorial and Saint Mary's (both located in Amsterdam), and Little Falls (approximately forty miles from Amsterdam). In a typical week, petitioner performs surgery in the mornings, and has regularly scheduled office hours at his Amsterdam office on three afternoons and at his Canajoharie office on one afternoon. Petitioner often drives from his home to Amsterdam Memorial or Saint Mary's, each of which are approximately two miles from his home, and then directly to his Amsterdam office in the afternoon, though he does sometimes go home for lunch. Occasionally, if no surgery is scheduled, petitioner drives from his home directly to his Amsterdam office, where he works for the day or picks up a nurse and patient files before continuing on to his Canajoharie office.

8. Petitioner uses his business vehicle to commute between his home, the hospitals, and his offices, to go to medical conventions and seminars and occasionally as transportation for family outings and vacations. Petitioner may, at times, also use one of the other three automobiles for business purposes. No logs or records were kept regarding the purpose or mileage of trips taken in any of the vehicles owned by petitioner.

9. Petitioner is not an employee of any of the aforementioned hospitals.

10. There is no dispute as to the dollar amounts in question. In addition, it is admitted that the designated business vehicle was, at times, used for non-business purposes notwithstanding a claim of 100 percent business use per petitioner's returns. However, petitioner asserts that the Audit Division's disallowance of eighty-five percent of the expenses at issue associated with his designated business vehicle is unreasonable. Citing the nature of his business, petitioner urges the Tax Commission to limit the disallowance to

fifteen percent based on commutation and personal use, regardless of petitioner's failure to produce logs or other records of usage to substantiate such petition.

11. Petitioner did not appear at the hearing to testify. Petitioner's accountant appeared and testified on petitioner's behalf.

CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law imposes upon petitioner the burden of refuting the Audit Division's disallowance and establishing that he is properly entitled to the automobile expenses claimed as deductible business expenses on each of the subject returns.

B. That under certain circumstances, if a taxpayer had no records to prove the amount of a business expense deduction but can establish that some expense was incurred, an allowance may be based on an estimate (Cohan v. Commissioner of Internal Revenue, 39 F2d 540). However, the absence of supporting records will "'bear heavily' against the taxpayer 'whose inexactitude is of his own making'" (Jack R. Olken v. Commissioner, 41 T.C.M. 1255, 1257 [1981], citing Cohan v. Commissioner, *supra*). Furthermore, where the Audit Division has allowed part of a deduction, the Audit Division's determination will not be altered "unless facts appear from which a different approximation can be made." (Robert L. Nowland v. Commissioner, 15 T.C.M. 368, 375 [1956]. See also, Masters v. Commissioner, 243 F2d 335 [3d Cir 1957].)


C. That petitioner has not sustained his burden of proving entitlement in full to the expenses claimed on the returns in question, nor has he produced such evidence from which an approximation patently more reliable than that of the Audit Division can be made. No vehicle usage logs or records of any kind were maintained or provided, nor did petitioner appear and testify in support of his position.

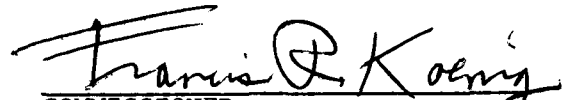
D. That the petition of Juan Laurilla is hereby denied, and the Notice of Deficiency dated June 3, 1985, together with such interest as may be lawfully owing, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 14 1986


PRESIDENT


COMMISSIONER


COMMISSIONER