

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of  
William Brent :

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 :  
Year 1981.  
\_\_\_\_\_ :

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 1st day of July, 1987, he/she served the within notice of Decision by certified mail upon William Brent the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Brent  
2760 Gateway  
North Bellmore, NY 11710

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  
1st day of July, 1987.

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

July 1, 1987

William Brent  
2760 Gateway  
North Bellmore, NY 11710

Dear Mr. Brent:

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

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition

of

WILLIAM BRENT

DECISION

for Redetermination of a Deficiency or for  
Refund of New York State Personal Income Tax  
under Article 22 of the Tax Law for the Year  
1981.

---

Petitioner, William Brent, 2760 Gateway, North Bellmore, New York 11710, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1981 (File No. 60669).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 28, 1987 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

#### ISSUE

Whether the Audit Division properly disallowed the investment tax credit claimed by petitioner on his automobile.

#### FINDINGS OF FACT

1. Petitioner herein, William Brent, timely filed a New York State Resident Income Tax Return for 1981 whereon he claimed an investment tax credit of \$384.00. Mr. Brent, a self-employed certified public accountant, claimed the investment tax credit on an automobile which was purchased in March of 1981 and which was used in his business activities as an auditor.

2. On February 25, 1985, the Audit Division issued a Statement of Audit Changes to petitioner for 1981 which contained the following explanation:

"Investment tax credit you claimed has been disallowed because your kind of business as an auditor is considered a service entity. The assets are not used in the production of goods by manufacturing, processing, assembling, etc.

Automobiles, trucks and other transportation vehicles or equipment used on public roads are not considered qualified property for New York State investment credit purposes.

ADDITIONAL PERSONAL INCOME TAX DUE \$384.00"

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on April 5, 1985, issued a Notice of Deficiency to petitioner for 1981. Said notice asserted additional tax due of \$384.00, plus interest of \$137.84, for a total allegedly due of \$521.84.

4. It is petitioner's position that section 606(a)(2) of the Tax Law arbitrarily and unconstitutionally discriminates against all taxpayers in the service industry since said section only allows an investment tax credit to be claimed on tangible personal property which is principally used in the production of goods.

#### CONCLUSIONS OF LAW

A. That Tax Law § 606(a)(2) provides for a credit against personal income tax based on the cost or other basis of:

"tangible personal property and other tangible property...which are...principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing."

B. That in the instant matter, petitioner's automobile was clearly not principally used in the production of goods and, therefore, the Audit Division properly disallowed Mr. Brent's claim for investment tax credit on said automobile.


C. That the constitutionality of the laws of the State of New York are presumed at the administrative level.

D. That the petition of William Brent is denied in its entirety and the Notice of Deficiency dated April 5, 1985 is sustained, together with such additional interest as may be lawfully due and owing.

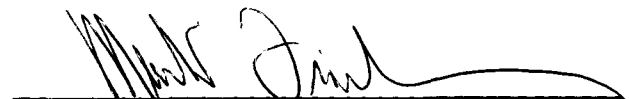
DATED: Albany, New York

STATE TAX COMMISSION

JUL 01 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER