

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
William Jones :

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 :

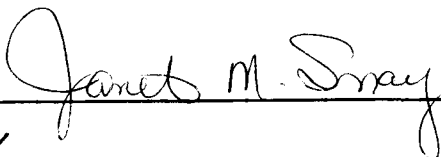
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 1st day of July, 1987, he/she served the within notice of Decision by certified mail upon William Jones the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

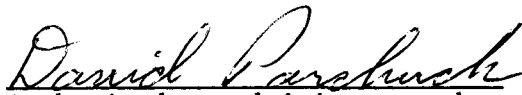
William Jones
107 Thorndale Road
Slingerlands, NY 12159

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.




Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William Jones :

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 1st day of July, 1987, he served the within notice of Decision by certified mail upon Joseph M. Mosca, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph M. Mosca
Mosca & Carmody
Executive Park Tower
Albany, NY 12203

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
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 Jones
107 Thorndale Road
Slingerlands, NY 12159

Dear Mr. Jones:

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:
Joseph M. Mosca
Mosca & Carmody
Executive Park Tower
Albany, NY 12203

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WILLIAM JONES : 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. :
:

Petitioner¹, William Jones, 107 Thorndale Road, Slingerlands, New York 12159, 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. 63016).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, W.A. Harriman State Office Campus, Albany, New York on January 13, 1987 at 1:15 P.M. with all documents to be submitted by February 18, 1987. Petitioners appeared by Mosca & Carmody (Joseph M. Mosca, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

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

1 Although the hearing was called in the name of William and Adrienne Jones, the Audit Division asserted a deficiency of personal income tax only against William Jones. Hence, all references to petitioner are references solely to William Jones.

FINDINGS OF FACT

1. Petitioner, William Jones, and his wife, Adrienne Jones, filed a New York State Resident Income Tax Return for each of the years 1982 and 1983. On each return, they selected a filing status of "Married filing separately on one return".

2. On June 26, 1985, the Audit Division issued a Notice of Deficiency to petitioner, William Jones, asserting a deficiency of personal income tax in the amount of \$1,434.70 plus interest of \$270.33 for a balance due of \$1,705.03 for the years 1982 and 1983. To the extent at issue herein, the asserted deficiency of personal income tax was premised upon a reduction of the depreciation expense which petitioner had claimed on his automobile. The reduction in the permitted business expense arose from the Audit Division's allowance of fifteen percent business use of petitioner's automobile as opposed to the seventy-five percent business use of the automobile which had been claimed.

3. During the years in issue, petitioner engaged in the practice of dentistry. He also invested in various real estate projects.

4. Petitioner did not appear at the hearing to offer testimony on his own behalf. However, his representative maintained that petitioner was engaged in a number of dealings involving real estate and that these activities required a great deal of use, by petitioner, of his car. Petitioner's representative argued that, among other trips, petitioner traveled to Lake George to examine property, traveled to a restaurant in which he owned an interest and traveled to Glenmont, New York wherein he owned apartments. On the basis of the foregoing, petitioner's representative maintained that permitting a fifteen percent business use of his automobile would be inequitable.

5. Petitioner's personal income tax returns were examined by the Internal Revenue Service for the years 1980 and 1983. These examinations did not result in any change in the amount of automobile expenses claimed. On the basis of the foregoing, petitioner submits that no adjustment to the claimed automobile expense is warranted.

6. Petitioner did not present any records to substantiate the business usage of his automobile during the years in issue.

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 an individual claiming travel expense is expected to maintain records or other proof substantiating the amount of the expense, time, place and business purpose of each trip (I.R.C. § 274; Treas. Reg. § 1.274-5[b][2]). That since petitioner did not present any vehicle usage logs or other evidence substantiating the foregoing items, he has not sustained his burden of proving entitlement in full to the expenses claimed on the returns in question (see Matter of Juan Laurilla, State Tax Commission, November 14, 1986).

C. That the fact that the Internal Revenue Service did not question the automobile expense claimed does not preclude an independent investigation or audit in regard thereto.

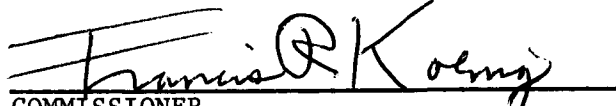
D. That the petition of William Jones is denied and the Notice of Deficiency, dated June 26, 1985, is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 01 1987.


PRESIDENT


COMMISSIONER


COMMISSIONER