

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SIDNEY KREPPEL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1965

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of May, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sidney Kreppel

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Sidney Kreppel
98 Andrew Avenue
Oakland, New Jersey 07436

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

10th day of May, 1972.

Rae Zimmerman

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

May 10, 1972

Sidney Kreppel
98 Andrew Avenue
Oakland, New Jersey 07436

Dear Sir:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
690 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 Months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright
Nigel G. Wright
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SIDNEY KREPPPEL	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1965.	:	

Sidney Kreppel filed a petition under section 689 of the Tax Law for the redetermination of a deficiency of personal income taxes under Article 22 of the Tax Law for the year 1965. A hearing was held on July 27, 1971, before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York City. The Income Tax Bureau was represented by Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel). The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner is entitled to deduct (a) expenses of an automobile used partially for business and partially for commuting; and (b) the entire amounts claimed as expenses of meals while on a business trip.

FINDINGS OF FACT

1. Petitioner resided in the North Bronx for part of 1965 and in Yonkers for the remainder of 1965. He was a bachelor at that time.

2. Petitioner was a field engineering specialist for I.B.M. reporting to their office in White Plains, about 15 miles from his home. He covered a territory consisting of Westchester County, half of Bronx County and in addition had some customers in Dutchess County and New York County. He would not report to I.B.M.'s business office in the morning but would go directly from his home to his first account and similarly he would not report to the office after his last account.

3. Petitioner drove his car 15,000 miles during the year. Of this, he admits that 4,500 miles (30%) was for purely personal use. He was reimbursed by I.B.M. for 6,346 miles, this being measured by the distance traveled between customers' locations plus any distance traveled to or from petitioner's home which was in excess of the distance between petitioner's home and the I.B.M. office. Petitioner claims that the distance traveled between his home and customers' locations which was not reimbursed by I.B.M. amounted to 4,250 miles.

4. The return of petitioner shows a deduction for 70% of the total automobile expenses shown and assumes that 10,500 miles were driven for business reasons. The deficiency is based upon allowing as auto expenses only the 6,346 miles driven entirely for business reasons and one-half of the 4,250 unreimbursed miles driven between petitioner's home and the customers' locations. This results in a business use ratio of 60%.

5. Business reasons required that petitioner carry in his car a substantial amount of equipment. This was an oscilloscope

weighing about 60 pounds, one attache case with tools and "test decks", one large brief case of technical manuals weighing about 50 pounds, a wooden box of lubricants and two vinyl cases of about eight pounds each containing circuit boards for the machines.

6. There was no convenient public transportation from petitioner's home to either the I.B.M. office or the customers' places of business.

7. During 1965, the petitioner attended a training course given by I.B.M. at its Poughkeepsie office covering techniques for its then new series 360 computers. This course required attendance both week days and weekends. I.B.M. paid directly for petitioner's lodging in a motel room which he shared with another employee attending the same training course. I.B.M. reimbursed petitioner for meals at the rate of \$6.50 to \$7.00 a day.

8. On his return, petitioner claimed gross expenses for this trip, stated to have lasted for 113 days from June 29, 1965 to October 19, 1965, of \$1,350.00 for meals (about \$12.00 a day) and \$80.00 for miscellaneous expenses. Petitioner showed reimbursement of \$728.00 and a resulting net expense deduction of \$708.00.

9. The deficiency notice disallows \$306.00 of this expense. It allows a meal expense of \$10.00 a day for 105 days and \$80.00 for miscellaneous expenses.

10. After a conference with personnel of the Income Tax Bureau, the petitioner was advised that a deficiency would be issued only disallowing travel expenses claimed for weekends. He presented no

evidence that he was entitled to travel expenses. The deficiency notice here in issue was then issued. At the hearing, petitioner presented a notebook covering only the 105 days from June 30, 1965 to October 12, 1965. This notebook listed only the daily totals for meals with no breakdown by meal or indication of the identity of the restaurant. In justification of the amounts of such expenses the only evidence beyond the diary presented by the petitioner was his claim that the prices for meals were such that he could not have a breakfast at a Howard Johnson's restaurant for less than \$2.00 to \$2.50 plus 25 cents tip. This claim is hereby found to be exaggerated.

11. The deficiency in issue is dated December 6, 1968, and is in the amount of \$49.08 plus \$8.81 interest for a total of \$57.89. This is based entirely on the disallowance of the amounts of \$395.12 for auto expense and \$306.00 for meal expenses.

CONCLUSIONS OF LAW

A. Expenses for use of the automobile while being used both for business purposes and for commuting purposes are deductible only in part. (Sullivan v. C.I.R. 368 F 2nd 1007, 2nd Circ., 1966; Fausner 55 U.S. Tax Court 620.)

B. Petitioner has not carried the burden of proof that the full amount claimed for meal expense was actually expended and was reasonable in amount. The fact that no specific form of proof is mandated by law or regulation does not mean that petitioner is relieved from the requirement of presenting a credible case (compare McKissock, 1969 U.S. Tax Court memo dec. no. 105).

C. The fact that the Income Tax Bureau may have shifted their reasons for disallowing an expense and finding a deficiency is immaterial. The audit of small returns can proceed most efficiently for both the taxpayer and the tax authorities on the basis of practical assumptions and estimates. To the extent a taxpayer objects to this, he must himself meet the legal requirements of the Tax Law and evidence including the rules of burden of proof. The petitioner here has failed to do that.

DECISION

The petition is denied and the deficiency, as stated, is due together with such additional interest, if any, as may be due pursuant to section 684 of the Tax Law.

DATED: Albany, New York

STATE TAX COMMISSION

May 10, 1972

COMMISSIONER

Bruce Hanley

COMMISSIONER

Milton Koenig

COMMISSIONER