

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ARTHUR SHERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) ~~on Period(s)~~ :  
1970, 1971, and 1972.

State of New York  
County of Albany

Donna Scranton, 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 5th day of August, 1976, she served the within  
Notice of Decision by (~~certified~~) mail upon Arthur  
Sherman ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Arthur Sherman  
3 Stringer Place  
Dundas NSW 2117, Australia

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 (~~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

5th day of August, 1976.

Donna Scranton

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 5, 1976

TELEPHONE: (518) **457-3850**

Mr. Arthur Sherman  
3 Stringer Place  
Dundas NSW 2117, Australia

Dear Mr. Sherman:

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

Please take further notice that pursuant to  
Section ~~(a)~~ **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

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

Very truly yours,

**FRANK J. PUCCIA**  
**SUPERVISOR OF**  
**TAX CONFERENCES**

Enc.

cc: ~~TAXPAYER'S REPRESENTATIVE:~~

Taxing Bureau's Representative:

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
ARTHUR SHERMAN : DECISION  
for a Redetermination of a Deficiency :  
or for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for the :  
Years 1970, 1971 and 1972. :

Petitioner, Arthur Sherman, 3 Stringer Place, Dundas NSW 2117, Australia, filed a petition for redetermination of a deficiency pursuant to Article 22 of the Tax Law for the years 1970. 1971 and 1972. (File No. 2-29270155.) On April 9, 1976, petitioner advised the State Tax Commission in writing his desire to waive a small claims hearing and to submit the case to the State Tax Commission upon the evidence contained in the file.

Are the activities engaged in by the taxpayer "activities not engaged in for profit"?

1. Petitioner filed personal income tax returns for the years 1970, 1971 and 1972. On these returns Mr. Sherman claimed business losses attributable to his activities as a writer and sculptor.

2. On March 25, 1974, the Income Tax Bureau issued a Notice of Deficiency for \$1,445.15 resulting from a disallowance of

business expenses, claiming the activities of the taxpayer were not engaged in for profit.

3. Mr. Sherman was a full-time professor at New York City Community College from 1968 until August 31, 1972, at which time he left New York State and has taken residence in Australia as a result of several lucrative offers to pursue his career as a sculptor.

4. The City of New York Department of Cultural Affairs has recognized Mr. Sherman as an artist. The certification is from June 21, 1970 to June 21, 1974.

5. The sculpture created by the applicant has been in view at the Eileen Kuhlik Gallery in New York City.

6. Mr. Sherman has corresponded with Greater Las Vegas Chamber of Commerce, The Readers Digest Association and Mrs. Louis Armstrong among others in a direct attempt to market his creations.

7. Hooker Projects Pty. Limited of Sydney, Australia in a letter to Mr. Sherman, dated July 19, 1973, has confirmed a quotation of \$27,000 for a sculpture at No. 1 Oxford Street, Sydney, the terms therein set forth.

#### CONCLUSIONS OF LAW

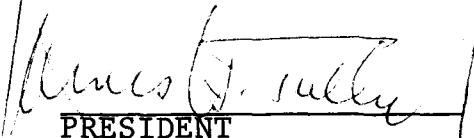
Petitioner is found to have engaged in his activities, as a sculptor for profit and accordingly deductions taken in connection with said activities are allowable under I.R.S. Code sections 162, 212(c)(1) and (2), and are not limited by section 183.

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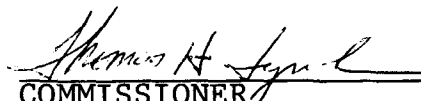
The petition of Arthur Sherman is granted and the Notice of Deficiency dated March 25, 1974, is cancelled and the Income Tax Bureau is instructed to issue such refund as may be lawfully owing together with interest thereon.

DATED: Albany, New York  
August 5, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER