

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD and JEAN C. CARRUS

AFFIDAVIT OF MAILING

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

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 31st day of May , 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Gerald & Jean C. Carrus

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Mr. & Mrs. Gerald Carrus  
55 Willow Drive  
Briarcliff Manor, New York 10510

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

31st day of May , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

May 31, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Gerald Carrus  
55 Willow Drive  
Briarcliff Manor, New York 10510

Dear Mr. & Mrs. Carrus:

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

Please take further notice that pursuant to  
Section(2) **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*  
**Frank J. Puccia**

**Supervisor of  
Small Claims Hearings**

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~  
petitioner's representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
GERALD and JEAN C. CARRUS	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1970.	:	

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Petitioners, Gerald and Jean C. Carrus, 55 Willow Drive, Briarcliff Manor, New York, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970 (TAB #13108). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 28, 1977, at 9:15 a.m. Petitioner, Gerald Carrus, appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq. of Counsel).

#### ISSUE

To what extent was the petitioner, Gerald Carrus, entitled to claim a deduction for alimony payments made to his former spouse during the year 1970?

FINDINGS OF FACT and CONCLUSIONS OF LAW

1. Petitioners, Gerald and Marilyn P. Carrus, executed a separation agreement in April, 1967. This agreement stipulated that during the year 1970, the petitioner would make weekly payments to Marilyn P. Carrus in the sum of \$235.00, of which \$135.00 would be attributable as alimony for the period January 1, 1970 through April 30, 1970, and commencing May 1, 1970 the weekly payments would be in the sum of \$250.00, of which \$150.00 would be attributable as alimony. The balance of these payments were attributable as child support.

2. During the year 1970, petitioner made payments to Marilyn P. Carrus in the sum of \$12,205.45, rather than \$12,980.00, which the separation agreement called for.

3. On his 1970 income tax return, petitioner, Gerald Carrus, made a deduction in the sum of \$7,680.00 for the portion of those payments representing alimony.

4. The Income Tax Bureau reduced the deduction for alimony payments to \$6,905.45 upon the grounds that under an agreement requiring payments for both alimony and child support, such payments shall first apply to child support.

5. During 1970, one of petitioner, Gerald Carrus's children lived in his household rather than with his former spouse,

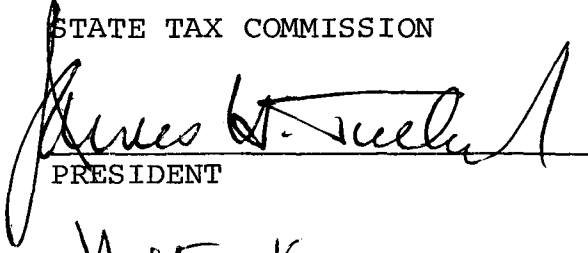
Marilyn P. Carrus; however, there was no amendment to the separation agreement. Petitioner contended that the amounts he paid to support the child living with him should be considered in determining his child support and alimony payments.

6. That the petitioner, Gerald Carrus's separation agreement required payments for both alimony and child support and that he paid less than the amount required by said agreement; therefore, the payments made pursuant to that agreement shall apply first to child support and then to alimony.


7. That the petition of Gerald Carrus is denied and the Notice of Deficiency, dated September 24, 1973, is sustained.

DATED: Albany, New York  
May 31, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER