

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY M. LINN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (8) 22 of the :
Tax Law for the Year (1968) or Period (1968) :
1968

State of New York
County of Albany

John Huhn , 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 17th day of February , 1978 , He served the within

Notice of Decision by (certified) mail upon Anthony M. Linn

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed


as follows: Anthony M. Linn
17 Lasher Lane
Edgewater, New Jersey 07020

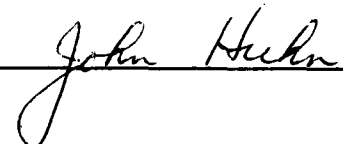
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of) ~~XXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of) ~~XXXXXX~~ petitioner.

Sworn to before me this

17th day of February , 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

February 17, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Anthony M. Linn
17 Lasher Lane
Edgewater, New Jersey 07020

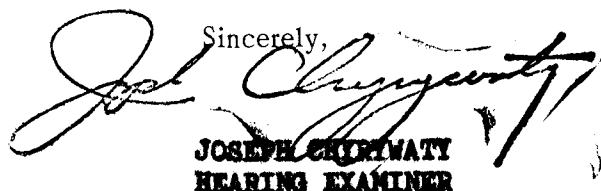
Dear Mr. Linn:

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 ~~151~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


JOSEPH CHIRWATY
HEARING EXAMINER

~~XX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ANTHONY M. LINN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1968.	:	

Petitioner, Anthony M. Linn, residing at 17 Lasher Lane, Edgewater, New Jersey 07020, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1968 (File No. 13279).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1977 at 2:00 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner was a resident of New York State during the year 1968.

II. Whether petitioner paid emergency transportation tax to the State of New Jersey for the year 1968.

III. Whether the Income Tax Bureau properly determined the amount of petitioner's total New York income for the year 1968.

FINDINGS OF FACT

1. Petitioner, Anthony M. Linn, did not file a New York State income tax return for the year 1968.

2. On February 11, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner on the grounds that a) his total reported Federal income was subject to New York State personal income tax and that b) he was liable for a penalty under section 685(a) of the Tax Law for his failure to file a New York State income tax return on or before the prescribed filing date. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued against petitioner in the amount of \$1,067.09, plus penalty of \$266.77 and interest of \$220.50 for a total of \$1,554.36.

3. Petitioner conceded that he was a New York State resident during the year 1968.

4. During 1968, petitioner was employed by the Union Carbide Corporation. He performed part of his services for said employer in the State of New Jersey. His employer withheld New Jersey emergency transportation tax from the wages petitioner earned in the State of New Jersey. Petitioner filed a 1968 New Jersey

Emergency Transportation Tax Nonresident Return and paid tax in the amount of \$244.37, with respect thereto.

5. Petitioner contended that he had made a mathematical error on his 1968 Federal tax return by reporting capital gains at 100% rather than at 50%. He submitted documentary evidence to support his contention that his taxable capital gains were \$4,344.17 rather than \$8,688.33, and that his total Federal income was \$14,410.84 rather than \$18,755.33 as reported on his Federal tax return.

CONCLUSIONS OF LAW

A. That petitioner, Anthony M. Linn, was a "resident individual" of New York State during the year 1968 in accordance with the meaning and intent of section 605 of the Tax Law.

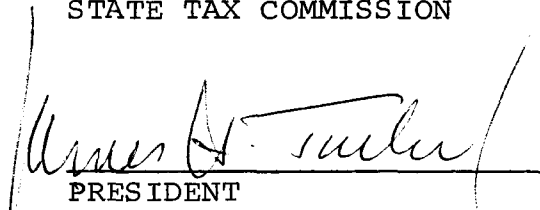
B. That petitioner, Anthony M. Linn, paid an emergency transportation tax of \$244.37 to the State of New Jersey for the year 1968 and was, therefore, entitled to a resident credit (for 1968 New York State income tax purposes) of said amount in accordance with the meaning and intent of section 620 of the Tax Law.

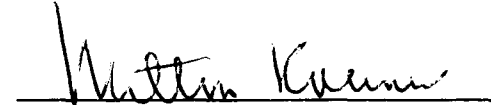
C. That petitioner's total New York income for the year 1968 was \$14,410.84 rather than \$18,755.33, as previously determined by the Income Tax Bureau.

D. That in accordance with Conclusions of Law "B" and "C", above, the Income Tax Bureau is hereby directed to reduce the deficiency of personal income tax shown on the Notice of Deficiency issued September 25, 1972 from \$1,067.09 to \$410.50 and to reduce the penalty thereon from \$266.77 to \$102.63; that these amounts shall be due together with such interest as may be lawfully owing and that, except as so modified, the petition of Anthony M. Linn is in all other respects denied.

DATED: Albany, New York
February 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER