

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR J. and JEANNE E. STUMMER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(*)~~ 22 of the
Tax Law for the Year ~~(*)~~ ~~xxxxxx~~ Period ~~(*)~~ 1973.:

State of New York
County of Albany

John Huhn, 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 24th day of April, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Arthur J. & Jeanne E.
Stummer ~~(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. Arthur J. Stummer
2706 West Genesee Street
Syracuse, New York

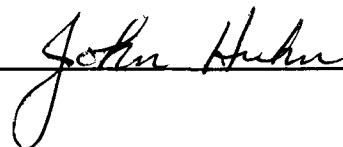
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

Sworn to before me this

24th day of April, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR J. and JEANNE E. STUMMER

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(~~xxxxxx~~) 1973.:
~~xxxxxx~~

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April , 1978, ~~she~~ he served the within
Notice of Decision by (certified) mail upon Jerome Hyde
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jerome Hyde, CPA
4317 East Genesee Street
Dewitt, New York 13214
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

24th day of April , 1978.







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

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

April 24, 1978

**Mr. & Mrs. Arthur J. Stummer
2706 West Genesee Street
Syracuse, New York**


Dear Mr. & Mrs. Stummer:

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 **(a) 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 Chyrywat
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ARTHUR J. and JEANNE E. STUMMER : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1973. :

Petitioners, Arthur J. and Jeanne E. Stummer, 2706 West Genesee Street, Syracuse, New York, 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 1973 (File No. 10839).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on July 27, 1977 at 9:15 A.M. Petitioners appeared by Jerome Hyde, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether legal expenses incurred by petitioner Arthur J. Stummer, in defense of charges of driving while intoxicated, are deductible for personal income tax purposes.

FINDINGS OF FACT

1. Petitioners, Arthur J. and Jeanne E. Stummer, filed a New York State combined personal income tax return for the year 1973 on which they deducted legal expenses in the amount of \$1,080.00.

2. The Income Tax Bureau contended that the legal expenses were personal expenses and, therefore, not deductible. Accordingly, it issued a Notice of Deficiency on October 27, 1975 in the amount of \$94.09 in tax, plus \$7.49 in interest, minus a \$29.00 overpayment on the return, for a total due of \$72.58.

3. Arthur J. Stummer was the mayor of Baldwinsville, New York, and was also engaged in a rubbish removal business. In 1971 he attended a church function in Baldwinsville. On the way home from said function, he was arrested and charged with driving while intoxicated, of which he was convicted in 1972. In 1973 petitioner paid \$1,080.00 for legal expenses in his attempt to reverse the adverse decision.

4. Arthur J. Stummer contended that he incurred the legal expenses in order to prevent the additional automobile insurance costs which would affect the net income from his rubbish removal business and also his net income as mayor. The conviction would also have had an adverse effect on his election to any subsequent public office to which he aspired.

5. Petitioner did not attend the church function in his official capacity as mayor. He was not required or obligated to attend said function, nor did he perform any official duty as mayor or engage in any rubbish removal business at the function. Petitioner was not engaged in any private or public business when he was arrested.

CONCLUSIONS OF LAW

A. That the origin and character of the legal expenses incurred by petitioner Arthur J. Stummer did not arise out of a profit-seeking activity, nor were they ordinary and necessary business expenses. The element of a business transaction was not present; therefore, said expenses were personal in nature and not deductible in accordance with the meaning and intent of sections 162(a) and 212 of the Internal Revenue Code.

B. That the petition of Arthur J. and Jeanne E. Stummer is denied and the Notice of Deficiency issued October 27, 1975 is sustained.

DATED: Albany, New York

April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER