

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Edward S. Conway :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1974. :

State of New York

County of Albany

Jay Vredenburg, 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 August, 1979, he served the within notice of Decision by certified mail upon Edward S. Conway, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward S. Conway
1905 W. Cone Blvd.
Greensboro, NC 27408

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
17th day of August, 1979.

Victoria Gary

Jay Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 17, 1979

Edward S. Conway
1905 W. Cone Blvd.
Greensboro, NC 27408

Dear Mr. Conway:

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(s) 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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EDWARD S. CONWAY	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	
	:	

Petitioner, Edward S. Conway, 1905 West Cone Boulevard, Greensboro, North Carolina 27408, 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 1974 (File No. 18233).

On February 9, 1978, petitioner informed the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file. After due consideration of said record, the Commission renders the following decision.

ISSUE

Whether petitioner was entitled to claim two dependency exemptions for 1974.

FINDINGS OF FACT

1. Petitioner, Edward S. Conway, timely filed a New York State Income Tax Resident Return (Form IT-201) for 1974, on which he claimed filing status as an unmarried head of household.

2. Petitioner claimed exemptions of \$1,950.00 for himself and his two daughters, Laura and Maureen.

3. On audit, petitioner produced nine checks for fifty dollars each which were made out to his ex-wife, Amelia F. Conway, and which the work papers of the Income Tax Bureau reported were for food for petitioner's ex-wife and two children. Petitioner contended that the money was to be used for insurance, medical, dental, clothing, educational, and transportation expenses for his two daughters. Petitioner did not submit any receipts, cancelled checks, records or other documents to support his claim that he was entitled to the two dependency exemptions.

4. Petitioner contended that a separation agreement signed on July 1, 1974 gave him the right to claim Maureen as a dependent for income tax purposes. He alleged that he paid all expenses relating to the house in which his ex-wife and children were living through September 6, 1974, including (but not limited to) mortgage payments, taxes, interest, insurance, heat, utilities and telephone.

5. On April 22, 1976, the Income Tax Bureau issued a Statement of Audit Changes, disallowing the two exemptions for petitioner's two daughters. This was done on the grounds that petitioner had not substantiated that he provided more than one-half of the total cost of the claimed dependent's support.

6. On June 10, 1976, petitioner appeared for a conference with the Income Tax Bureau, at which time the dependency exemption for Maureen was allowed. Accordingly, on June 10, 1976, the Income Tax Bureau issued a revised Statement of Audit Changes, in which it allowed the exemption for Maureen but disallowed the exemption for Laura. This was done on the grounds that petitioner did not show that he provided more than one-half of her total support. On January 24, 1977, the Income Tax Bureau issued a Notice of Deficiency asserting personal income tax of \$65.00, plus interest of \$9.84, for a total of \$74.84.

7. Petitioner's daughter Laura filed a New York State income tax return for 1974 and paid the tax shown to be due with said return. The income reported on her return was in excess of the amount substantiated by petitioner for her support.

CONCLUSIONS OF LAW

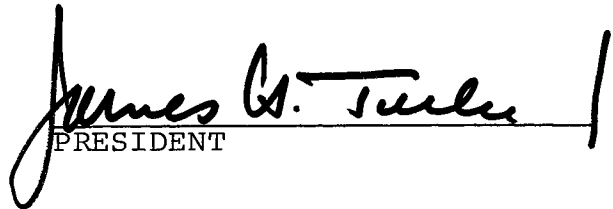
A. That petitioner, Edward S. Conway, did not provide more than one-half of the total support of his daughter Laura during 1974, within the meaning of section 152(e) of the Internal Revenue Code; therefore, he is not entitled to claim a dependency exemption for his daughter Laura for said year under section 151(e) of the Internal Revenue Code and section 616(a) of the Tax Law.

B. That the petition of Edward S. Conway is denied and the Notice of Deficiency issued January 24, 1977 is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 17 1979


PRESIDENT


COMMISSIONER


COMMISSIONER