

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Stephen & Mary Desco

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 Years 1969 & 1970. :

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 Stephen & Mary Desco, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen & Mary Desco
RD #3, Box 11
Catskill, NY 12414
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

Stephen & Mary Desco
RD #3, Box 11
Catskill, NY 12414

Dear Mr. & Mrs. Desco:

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	:	
STEPHEN DESCO AND MARY DESCO	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969 and 1970.	:	

Petitioners, Stephen Desco and Mary Desco, RD #3, Box 11, Catskill, New York 12414, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969 and 1970 (File No. 00668).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on August 17, 1978 at 9:15 A.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether the reimbursement received by petitioner Stephen Desco for employment-related expenses incurred on behalf of his employer during 1969 and 1970 constituted taxable income, and whether said expenses constituted deductible employee business expenses.

FINDINGS OF FACT

1. Petitioners, Stephen Desco and Mary Desco, timely filed New York State personal income tax returns for 1969 and 1970, on which Stephen Desco ("petitioner") did not report the reimbursement he received for employment-related expenses incurred on behalf of his employer, in the respective amounts of \$2,400.00 and \$155.00. Said compensation received was in addition to his wages.

2. Petitioner was employed as a general foreman who supervised the work of masons at four job sites located in Albany and Troy, New York. As foreman he used his truck to visit each job site at least once a day and to transport machinery, tools and personnel from one job site to another. He lived in Catskill, New York, which was 32 miles from his work area, and commuted to and from work each day. He did not claim a deduction for employment-related expenses on his tax returns.

3. The Income Tax Bureau contended that the reimbursement he received for the expenses he incurred constituted taxable income, and that said expenses were nondeductible since Albany was petitioner's "tax home." On February 26, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioners for 1969 and 1970, asserting personal income tax of \$262.86, plus interest of \$44.32, for a sum of \$307.18.

4. Petitioner contended that the question of his "tax home" was not at issue because the compensation he received was neither a reimbursement for living and/or transportation expenses incurred while working away from home, nor a reimbursement for commuting expenses. He stated that he was given a reimbursement allowance which was approximately the same as the amount of the expenses he incurred for the use of his truck on the job, and that at no time was he requested by the Income Tax Bureau to substantiate said expenses.

CONCLUSIONS OF LAW

A. That the reimbursement allowance received by petitioner Stephen Desco during 1969 and 1970 constituted taxable income, in accordance with section 61 of the Internal Revenue Code. Said expenses incurred on behalf of his employer were deductible employee business expenses, in accordance with section 62 of the Internal Revenue Code.

B. That the employment-related expenses equaled the amount of reimbursement received and, therefore, no tax is due.

C. That the petition of Stephen Desco and Mary Desco is granted and the Notice of Deficiency issued February 26, 1973 is cancelled.

DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER