

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DENIS J. O'CONNELL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~xxxxxx~~ 1972.:

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 6th day of April , 1979 , she served the within

Notice of Decision by (certified) mail upon Denis J. O'Connell

~~(representative of)~~ the petitioner in the within proceeding,

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

as follows: Denis J. O'Connell
147 South Forest Avenue
Rockville Centre, New York 11570

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)~~
~~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

6th day of April , 19 79

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DENIS J. O'CONNELL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of **Personal Income** :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ 1972 :

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 6th day of April , 1979 , ~~she~~ served the within
Notice of Decision by (certified) mail upon Jeffrey R. Hoops, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jeffrey R. Hoops, CPA
Ernst & Ernst
1 Huntington Quadrangle
Huntington Station, New York 11746
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

6th day of April , 1979.

Marilyn J. Papmeyer

John Huhn



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

April 6, 1979

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

Denis J. O'Connell
147 South Forest Avenue
Rockville Centre, New York 11570

Dear Mr. O'Connell:

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,

Joseph Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
DENIS J. O'CONNELL : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1972. :
:

Petitioner, Denis J. O'Connell, 147 South Forest Avenue, Rockville Centre, New York 11570, 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 1972 (File No. 00395).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 10, 1978 at 2:45 P.M. Petitioner appeared by Jeffrey R. Hoops, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether deductions for business expenses, contributions, and miscellaneous deductions were deductible and substantiated by petitioner.

FINDINGS OF FACT

1. Petitioner, Denis J. O'Connell, timely filed a New York State income tax resident return for 1972 (Form IT-201).

2. On May 20, 1974, the Income Tax Bureau issued a Notice of Deficiency to petitioner, asserting personal income tax of \$697.59, plus interest of \$87.77, for a total of \$785.36. Said Notice contained the following explanation and adjustments:

"Since you have not replied to our letter dated January 24, 1974, the items below are disallowed as unsubstantiated..."

| <u>ITEM</u> | <u>PER RETURN</u> | <u>CORRECTED</u> | <u>ADJUSTMENT</u> |
|--|-------------------|------------------|-------------------|
| Business Expenses | \$2,670.00 | - 0 - | \$2,670.00 |
| Contributions | 1,525.00 | - 0 - | 1,525.00 |
| Misc. Deductions | 820.00 | - 0 - | 820.00 |
| 20% of your non-taxable capital gains | - 0 - | \$23.00 | <u>23.00</u> |
| TOTAL ADJUSTMENT | | | \$5,038.00..." |

3. Petitioner did not contest the capital gain adjustment of \$23.00.

4. Petitioner failed to substantiate the business expenses deducted on his 1972 personal income tax return.

5. Petitioner submitted documentary evidence to substantiate contributions to the extent of \$1,102.00.

6. Petitioner submitted documentary evidence to substantiate miscellaneous deductions to the extent of \$95.00.

CONCLUSIONS OF LAW

A. That petitioner, Denis J. O'Connell, failed to sustain the burden of proof imposed by section 689(e) of the Tax Law necessary to support his contention that he is entitled to deduct, in full, the amounts claimed on his personal income tax return for business expenses,

contributions and miscellaneous deductions. The actual amounts substantiated were \$1,102.00 in contributions and \$95.00 in miscellaneous deductions.

B. That the Income Tax Bureau is hereby directed to modify the Notice of Deficiency, issued May 20, 1974, as follows:

| <u>ITEM</u> | <u>PER RETURN</u> | <u>CORRECTED</u> | <u>ADJUSTMENT</u> |
|--|-------------------|------------------|--------------------|
| Business Expenses | \$2,670.00 | - 0 - | \$ 2,670.00 |
| Contributions | 1,525.00 | \$1,102.00 | 423.00 |
| Misc. Deductions | 820.00 | 95.00 | 725.00 |
| 20% of your non-taxable capital gains | - 0 - | 23.00 | 23.00 |
| TOTAL ADJUSTMENT | | | \$ 3,841.00 |
| New York Taxable Income Reported | | | 20,496.00 |
| Corrected New York Taxable Income | | | <u>\$24,337.00</u> |

C. That the petition of Denis J. O'Connell is granted to the extent indicated in Conclusions of Law "A" and "B" above, but that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
April 6, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER