

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Frank & Gloria Parmigiano

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 1972.

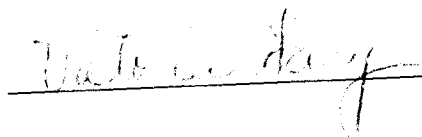
State of New York
County of Albany

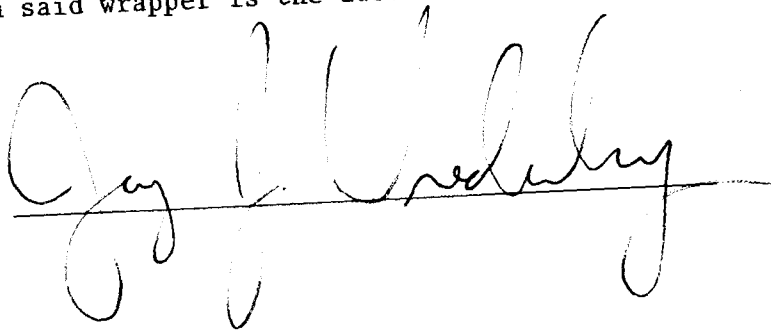
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of August, 1979, he served the within Notice of Decision by certified mail upon Frank & Gloria Parmigiano, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank & Gloria Parmigiano
586 Dell Pl.
Stanhope, NJ 07874
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
8th day of August, 1979.





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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 8, 1979

Frank & Gloria Parmigiano
586 Dell Pl.
Stanhope, NJ 07874

Dear Mr. & Mrs. Parmigiano:

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 black ink, appearing to read "John J. Sollecito", written in a cursive style.

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK PARMIGIANO and GLORIA PARMIGIANO	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income	:	
Tax under Article 22 of the Tax Law	:	
for the Year 1972.	:	

Petitioners, Frank Parmigiano and Gloria Parmigiano, 586 Dell Place, Stanhope, New Jersey 07874, 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. 13613).

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 June 19, 1978 at 2:45 P.M. Petitioner Frank Parmigiano appeared pro se and for his wife, petitioner Gloria Parmigiano. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner Frank Parmigiano properly claimed a deduction for education expenses on his New York State personal income tax return for 1972.

FINDINGS OF FACT

1. Petitioners, Frank Parmigiano and Gloria Parmigiano, timely filed a New York State combined personal income tax return for 1972, on which petitioner Frank Parmigiano deducted education expenses of \$1,948.74.

2. The Income Tax Bureau issued a Statement of Audit Changes to petitioners, on which it disallowed the deduction for said expenses. This was done on the grounds that the education expenses were incurred by petitioner Frank Parmigiano in meeting the minimum requirements of his employment. Accordingly, it issued a Notice of Deficiency against petitioners on February 25, 1974 for \$158.93 in personal income tax, plus \$10.32 in interest, for a total of \$169.25. The Income Tax Bureau also disallowed certain other claimed expenses, which were not contested by petitioners and are not at issue here.

3. Petitioner Frank Parmigiano was employed as an accountant-trainee by Allied Chemical Corporation on June 2, 1969. His employment requirements with Allied were either a Bachelor's degree in accounting or a related field, or a minimum of 12 credit hours in accounting, plus demonstrated and continuing satisfactory college attendance in a program directed towards earning this degree.

4. Petitioner had the required 12 credit hours in accounting at the time he was employed. He was also continuing his education during the year at issue in order to earn a Bachelor's degree in accounting.

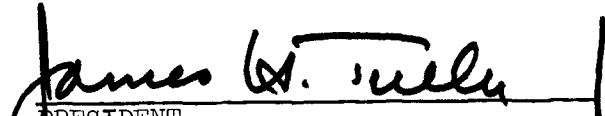
CONCLUSIONS OF LAW

A. That petitioner Frank Parmigiano improperly deducted education expenses incurred during 1972, since said expenses were incurred in order to meet the minimum requirements of his employment and were, therefore, not deductible under section 162 of the Internal Revenue Code (See: Treas. Reg. 1.162-5(b)(2).)

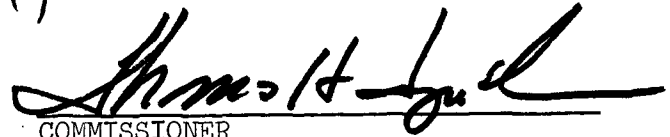
B. That the petition of Frank Parmigiano and Gloria Parmigiano is denied and the Notice of Deficiency issued February 25, 1974 is sustained.

DATED: Albany, New York
August 8, 1979

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER

COMMISSIONER