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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MAURICE C. and STATIA Z. SUBLETTE

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1970.

State of New York
County of Albany

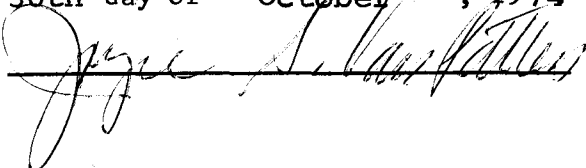
JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of October, 1974, she served the within
Notice of Decision (or Determination) by ~~(certified)~~ mail upon MAURICE C. and
STATIA Z. SUBLETTE (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Maurice C. Sublette
Homat Royal, Apt. 203
14-11, Akasaka, I-Chome
Minatoku, Tokyo, 107, Japan

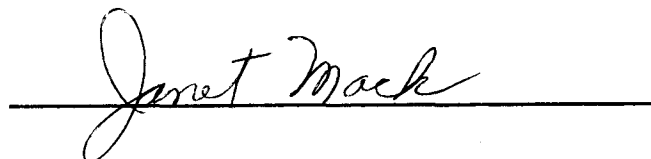
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

30th day of October, 1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
October 30, 1974

Mr. and Mrs. Maurice C. Sublette
Hemat Royal, Apt. 203
14-11, Akasaka, I-Chome
Minatoku, Tokyo, 107, Japan

Dear Mr. and Mrs. Sublette:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
MAURICE C. and STATIA Z. SUBLETTE : DECISION
for Redetermination of a Deficiency :
or for Refund of Personal Income :
Taxes under Article 22 of the Tax :
Law for the Year 1970. :

Petitioners, Maurice C. Sublette and Statia Z. Sublette, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970. (File Nos. 1-84489936 and 0-53401826). On March 23, 1974, petitioners, Maurice C. Sublette and Statia Z. Sublette, executed a written waiver of formal hearing and requested that the State Tax Commission decide the case upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Was petitioners, Maurice C. Sublette and Statia Z. Sublettes' tax home located in Schenectady, New York, for the years 1970 and 1971?

FINDINGS OF FACT

1. Petitioners, Maurice C. Sublette and Statia Z. Sublette, filed New York State income tax resident returns for the years 1970 and 1971.

2. On December 28, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Maurice C. Sublette and Statia Z. Sublette, imposing additional personal income tax in the amount of \$648.50 upon the grounds that nonbusiness travel is not

deductible and an adjustment to itemized deductions was warranted since they failed to apply the nonresident formula to said deductions. On August 27, 1973, the Income Tax Bureau issued a second Statement of Audit Changes against petitioners, Maurice C. Sublette and Statia Z. Sublette, which imposed additional personal income tax on the basis of its disallowance of certain miscellaneous deductions, employee business deductions and state and local tax deductions in the amount of \$1,001.28. It accordingly issued corresponding notices of deficiency in the amounts of \$753.58 and \$1,083.35, respectively.

3. During the year 1970, petitioners, Maurice C. Sublette and Statia Z. Sublette, lived in Erie, Pennsylvania. They maintained a ballet studio in Erie, Pennsylvania. From 1955 through 1969, petitioner, Maurice C. Sublette, was employed as a marketing manager by the General Electric Company in Erie, Pennsylvania. In 1970, he was transferred by the General Electric Company to Schenectady, New York. The travel costs were not reimbursed by the General Electric Company.

4. During the year 1971, petitioners, Maurice C. Sublette and Statia Z. Sublette, sold their residence in Erie, Pennsylvania and moved to Scarborough, New York. Petitioner, Maurice C. Sublette, continued to travel between Schenectady, New York, and their new place of residence; that being Scarborough, New York. They also maintained a ballet studio at Scarborough, New York.

5. Petitioners, Maurice C. Sublette and Statia Z. Sublette, submitted detailed records in conjunction with their Mohawk Golf Club claim. Said golf club was located in Schenectady, New York. Said records showed a total use of 16 times, nine of which were for business purposes in 1971. They failed, however, to submit substantial proof to support their claim for additional miscellaneous expenses.

CONCLUSIONS OF LAW

A. That since petitioners, Maurice C. Sublette and Statia Z. Sublettes' tax home was Schenectady, New York, for the years 1970 and 1971, expenses incurred in traveling from Erie, Pennsylvania to Schenectady, New York, and Scarborough, New York to Schenectady, New York, were not ordinary and necessary business expenses but nondeductible commuting costs. Commissioner v. Flowers, 46-1 U.S.T.C. ¶9127, 362 U.S. 465 (1946).

B. That petitioners, Maurice C. Sublette and Statia Z. Sublette, have substantiated their claim that the Mohawk Golf Club membership was primarily used for business purposes for the year 1971, hence, 56.2% of the dues paid to said club was deductible pursuant to section 274 of the Internal Revenue Code and Reg. §1.274-2.

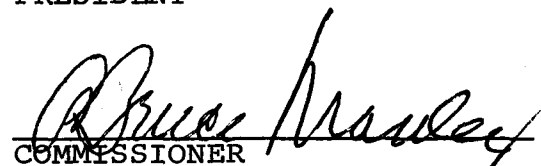
C. That petitioners, Maurice C. Sublette and Statia Z. Sublette, failed to submit sufficient proof to substantiate their claim for additional miscellaneous deductions.

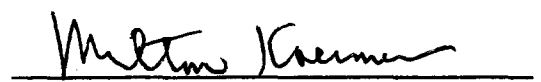
D. That except as so granted, the petition of Maurice C. Sublette and Statia Z. Sublette is in all other respects denied, and the notices of deficiency issued on August 27, 1973 and December 28, 1973, are sustained.

DATED: Albany, New York
October 30, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER