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STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
Mario A. Procaccino
~~XXXXXXXXXXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

April 5, 1974

Mr. & Mrs. Frank L. Sund
6228 Mojave Drive
San Jose, California 95120

Dear Mr. & Mrs. Sund:

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

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
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 relat-
ing 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

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
FRANK L. and MARTHA T. SUND : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1968. :

Frank L. and Martha T. Sund, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency issued January 18, 1971, in the amount of \$220.25 plus interest of \$24.29 for a total of \$254.54 in personal income tax under Article 22 of the Tax Law for the year 1968.

In lieu of a hearing, petitioners submit their case to the State Tax Commission on the file of the Income Tax Bureau.

Said file has been duly examined and considered.

ISSUE

The issue in this case is the inclusion in New York taxable income of a reimbursement of expenses of moving from California to Connecticut for the purpose of working in New York.

FINDINGS OF FACT

1. Prior to 1968, petitioners were residents of San Jose, California. Mr. Sund was employed by International Business Machines. On July 13, 1968, petitioners moved from California to Norwalk, Connecticut, in connection with the transfer of Mr. Sund to an IBM office in Harrison, New York.

2. Mr. Sund incurred direct expenses in his move from California to Connecticut. These included a moving van expense of \$5,127.94 and personal travel expense of \$866.80 for a total

of \$5,994.74. He also incurred indirect moving expenses of \$2,502.15 in connection with his California house, \$398.75 closing costs of his Connecticut house and \$2,904.31 of additional travel expense for a total of \$5,804.21.

3. Mr. Sund received a base salary of \$17,646.89 in 1968. In addition, his employer either paid directly or reimbursed him for his direct moving expenses of \$5,994.74. His employer also reimbursed him for indirect expenses of \$5,804.61 and in addition paid him a "tax assistance" amount computed on indirect expenses of \$5,724.81. This "tax assistance" amounted to the sum of \$1,756.60. The total payments to Mr. Sund amounted to \$31,202.84.

4. Mr. Sund's employer reported his salary for Federal withholding purposes apparently by excluding the reimbursement for direct expenses of \$5,994.74 and including only \$25,208.10. His employer reported New York withholding on the amount of \$16,296.92 consisting of \$8,735.71 as the portion of base salary earned after Mr. Sund's transfer plus the \$5,804.61 reimbursement for indirect expenses and \$1,756.60 for "tax assistance".

5. After July 13, 1968, petitioner worked 89 days in New York and 20 days at locations outside of New York. In the year 1968 as a whole, he worked 89 days in New York and 142 days outside of New York.

6. Mr. and Mrs. Sund filed a nonresident New York income tax return. This showed their total salaries at \$26,791.10 consisting of salary of Mrs. Sund of \$1,583.00, (earned entirely in California) and \$25,208.10 earned by Mr. Sund. It also showed other items of gain and loss so that the total said to be reported on the Federal return was \$26,557.35. He declared that of the \$16,296.92 shown on his New York withholding statement, the amount of \$7,561.21 was attributable to moving expenses, the remainder of \$8,735.71

he allocated to New York by the ratio of 89 days worked in New York over 109 total days worked after his move from California. This resulted in New York wages of \$7,132.99.

7. The deficiency notice adds the reimbursement for indirect moving expenses back to New York income and allocates that by the ratio of 89 days over 109 days. It also makes computational adjustments which are not contested.

CONCLUSIONS OF LAW

The petitioners, who were at all times nonresidents of New York, are taxable on the net amount of items of income which enter into their Federal adjusted gross income which are "derived from or connected with New York sources..." (Tax Law section 632(a)(1)(B)). These include items of income attributable to an occupation carried on in New York (Tax Law section 632(b)(1)(B)).

Such items of income attributable to an occupation carried on in New York should reasonably include the reimbursement, at issue in this case, for moving expenses incurred in connection with a transfer to a job location in New York. This is not only a reasonable position, it is also consistent with the treatment of moving expenses for Federal income tax purposes.

The Internal Revenue Code and the Internal Revenue Service have characterized the reimbursement of moving expenses as "attributable to the performance of services if made because of the employer-employee relation" (U.S. Treas. Reg. 1.82-1 (a)(5) applicable to calendar years 1970 and following). They have similarly characterized moving expenses themselves as incurred "in connection with" the commencement of work at a new job location (I.R.C. 217(a)). And such expenses (with limitations) are deductible from Federal gross income to reach adjusted gross

income to reach adjusted gross income by reason of I.R.C. section 62(8). This is true of both the direct and indirect expenses of a move.

The direct expenses are deductible under I.R.C. section 217 (applicable to calendar years 1964 and following) and the petitioner in this case so deducted them, in effect, by not reporting either such expenses or the employer's reimbursement of such expenses. This would seem to be an admission by petitioner that such expenses are in fact related to the new employment (see Hartung 55 U.S. Tax Court 1, dissenting opinion of Drenen, J. at page 4). Such direct expenses when incurred in a move to a foreign nation have been held "allocable or chargeable against" the earned income from foreign sources excluded from income under I.R.C. section 911 (Hartung v. Comm'r 484 F2d 953 reversing 55 U.S. Tax Court 1 and adopting the opinion of Sterrett, J., 55 U.S. Tax Court 1 at page 5).

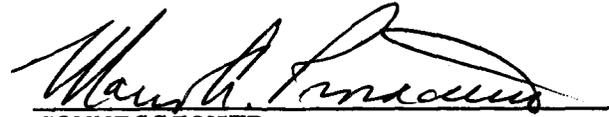
The indirect expenses of a move including expenses incident to the sale and purchase of homes, are deductible, with limitations, under the same I.R.C. section 217 for calendar years 1970 and following. The fact that such expenses are not deductible during the years in issue in this case does not, however, imply that they are unrelated to income (see Hartung, 55 U.S. Tax Court 1, opinion of Sterrett J., footnote 1). To the extent that such indirect expenses are deductible on the Federal return, as they are to some extent beginning in 1970, they would to that extent reduce Federal adjusted gross income and also the New York adjusted gross income of a taxpayer being transferred to a job location in New York State with the result that the increased income from reimbursement would be reduced by the amount of such expenses.

DECISION

The deficiency is correct and is due together with such interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
April 5, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER