

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DONALD F. COPELAND

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) 1972 :

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 18th day of December , 1975 , she served the within

Notice of Decision (~~on Redetermination~~) by (certified) mail upon Donald F. Copeland

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

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Donald F. Copeland
Star Route
Box 65

McDonough, New York 13804

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

18th day of December , 1975.

Mary Groff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DONALD F. COPELAND

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) 1972

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 18th day of December , 1975 , she served the within

Notice of Decision (~~of determination~~) by (certified) mail upon Michael H. Zuckerman,
Esq. & John H. Hartman, (representative of) the petitioner in the within
Esq.

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Michael H. Zuckerman, Esq.

& John H. Hartman, Esq.

Levene, Gouldin & Thompson

902 Press Building

and by depositing same enclosed in a postpaid properly addressed wrapper in a
Binghamton, New York 13902

(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

18th day of December , 1975

Mary Greff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) ~~518-3850~~
457-3850

DATED: Albany, New York
December 18, 1973

Mr. Donald F. Copeland
Star Route
Box 65
McDonough, New York 13804

Dear Mr. Copeland:

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

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---------------------------------------|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| DONALD F. COPELAND | : | |
| for a Redetermination of a Deficiency | : | DECISION |
| or for Refund of Personal Income Tax | : | |
| under Article 22 of the Tax Law for | : | |
| the Year 1972. | : | |

Donald F. Copeland, Star Route, Box 65, McDonough, New York 13804, filed a petition under section 689 of the Tax Law for a redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the year 1972.

Said deficiency was asserted by notice issued May 20, 1974, under File No. 2-25665452 and is in the amount of \$248.32 plus interest of \$20.40 for a total of \$268.72.

In lieu of a hearing, petitioner submits his case to the Commission on the file of the Income Tax Bureau. The petitioner is represented by Michael H. Zuckerman, Esq. and John H. Hartman, Esq., of Levene, Gouldin & Thompson of Binghamton, New York.

Said file has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner can deduct expenses of travel and maintenance incurred in connection with work at locations at a distance from his home.

FINDINGS OF FACT

1. Mr. Copeland resides with his wife in McDonough, Chenango County, New York. His wife works in Norwich nearby and his children are in school in McDonough.

2. Mr. Copeland was employed in 1972 by T.D. Bross Line Corp. of Hartford, Connecticut. He was employed by them also in 1971 and 1973.

3. He is a member of local 1249 of the International Brotherhood of Electrical Workers, which has its office in East Syracuse, New York. Its jurisdiction covers the State of New York north of the Westchester County and west of the Hudson River.

4. Petitioner was employed as a truck driver. He worked at construction job sites for a project to construct a power line from Westchester County through Rockland, Orange, Sullivan and Delaware counties to Binghamton in Broome County.

5. Petitioner lived for the entire year at the Stony Point, Rockland County, New York, for which he paid \$2,860.00.

6. Petitioner worked at six job sites mainly in Rockland County, all of which were within commutation distance from his motel in Stony Point. (Sites at Mount Ivy, New York, Mohawk, New Jersey, Suffern and Hillburn in Rockland County, New York, Ramapo, Rockland County).

7. Petitioner claimed travel expenses of \$2,860.00 for a motel, for which he has bills and receipts, \$2,636.00 for meals computed at \$10.00 a day for five days, and sometimes six days a week, \$624.00 in collect telephone calls to his home and \$2,194.00 for auto expenses computed on 19,032 miles and tolls of \$31.00.

8. Petitioner received reimbursement for expenses from his employer of \$5,200.00 for the year. This was not included in petitioner's income. He has applied this in reduction of his expense claim.

CONCLUSIONS OF LAW

A. That the petitioner's employment by T.D. Bross Line Corp. of Hartford, Connecticut, at a power line project in the areas of Rockland County, New York, and Mohawk, New Jersey, was indefinite in nature.

B. That the petitioner did not sustain his burden of proof in showing his residence in Rockland County during 1972 to be of a temporary and business-related nature. Although petitioner worked

at six different job sites, he worked for the same employer on the same overall project in the same general area. This employment lasted well over a year beginning in 1971 and lasting into 1973. The petitioner did not prove that he could reasonably expect his employment to terminate within a fixed or short period of time so that it could be characterized as temporary.

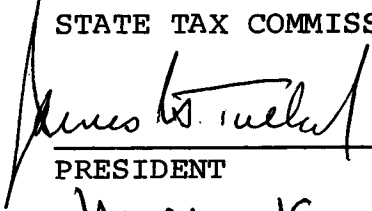
C. That the traveling and living expenses incurred by petitioner in the Rockland County area during 1972 did not constitute business expenses within the meaning and intent of section 162(a)(2) of the Internal Revenue Code of 1954.

DECISION

That the petition of Donald F. Copeland is denied. The Notice of Deficiency issued on November 27, 1972, found to be correct and is due together with such interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
December 18, 1975

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER

COMMISSIONER