

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS and GAIL MC GUIRE

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) 1969 and 1970.:

State of New York  
County of Albany

MARY GROFF, 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 December, 1975, she served the within  
Notice of Decision ~~(or Determination)~~ by (certified) mail upon THOMAS and GAIL  
MC GUIRE  
~~(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. Thomas McGuire  
45 Wilder Avenue  
Hoosick Falls, New York 12090

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)~~  
~~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 December, 1975.

Janet Mack

Mary Groff



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

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

AREA CODE 518

DATED: Albany, New York  
December 30, 1975

ADDRESS YOUR REPLY TO  
Mr. Wright  
Mr. Leisner  
Mr. Coburn  
(518) 457-3850

STATE TAX COMMISSION  
JAMES H. TULLY, JR., PRESIDENT  
MILTON KOERNER

Mr. and Mrs. Thomas McGuire  
45 Wilder Avenue  
Hoosick Falls, New York 12090

Dear Mr. and Mrs. McGuire:

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

Please take further notice that pursuant to  
Section (x) 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,

  
Paul B. Coburn  
HEARING OFFICER

Enc.

cc: ~~xx~~  
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
THOMAS and GAIL MCGUIRE	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1969 and 1970.	:	
	:	

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Petitioners, Thomas and Gail McGuire, 45 Wilder Avenue, Hoosick Falls, New York 12090, have filed a petition for a redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969 and 1970. (File No. 0-55419457). The petitioners waived in writing a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file.

ISSUES

I. Were the petitioners, Thomas and Gail McGuire, entitled to deductions under section 162(a)(2), I.R.C. for the year 1969 for amounts expended for meals, lodging and transportation while Thomas McGuire worked away from Rensselaer County, New York?

II. Were the petitioners, Thomas and Gail McGuire, entitled to deductions for the years 1969 and 1970 for amounts expended by Thomas McGuire for transportation between construction sites during the working day?

FINDINGS OF FACT

1. The petitioners, Thomas and Gail McGuire, filed timely New York State income tax returns for the years 1969 and 1970.

2. On February 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners disallowing deductions for travel, lodging and meals incurred away from home and for automobile expenses for travel between job sites in Thomas McGuire's capacity as a construction worker.

3. The petitioners, Thomas and Gail McGuire, have maintained a permanent residence at 45 Wilder Avenue, Hoosick Falls, New York 12090. Prior to 1969, the petitioners' tax home was the Hoosick Falls, Rensselaer County area where Thomas McGuire worked and gained employment through his union local.

4. Petitioner, Thomas McGuire, was employed by Foster-Lipkin Corporation as a superintendent of construction. From January, 1969 until August 1, 1969, Mr. McGuire was employed at a construction site in Rochester, New York. The petitioners did not change their residence. Mrs. McGuire remained in Hoosick Falls. Mr. McGuire

lived in a motel during his work in Rochester and returned to Hoosick Falls on weekends. Initially, Mr. McGuire received \$100.00 per week from Foster-Lipkin Corporation in supplemental income for expenses incurred for meals, travel and lodging while working in Rochester. This allowance was later increased to \$125.00 per week.

5. From August 3, 1969 until September 5, 1970, petitioner, Thomas McGuire, was employed at various construction sites in the Albany area by Foster-Lipkin Corporation. The nature of his job as superintendent required him to travel between these job sites during the day. Mr. McGuire utilized his own automobile for this travel and received \$25.00 per week as reimbursement for automobile expenses.

6. The Income Tax Bureau determined that additional income should have been reported for 1969 and 1970 in the amounts of \$4,050.00 and \$900.00, respectively. The assessed deficiency in total for both tax years was \$371.83. The petitioners presented documentary evidence of Mr. McGuire's motel expenses in Rochester totaling \$1,312.45.

#### CONCLUSIONS OF LAW

A. That, the petitioners, Thomas and Gail McGuire, were entitled to deductions of travel, meals and lodging expenses.

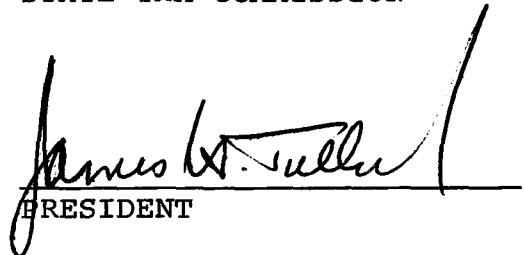
Mr. McGuire's employment in Rochester was not of sufficient anticipated or actual duration to shift their tax home situs to Rochester. The employment was of a temporary and definite nature. (See Rev. Ruling 60-189, 1960, 1 C.B. 60 and In the Matter of the Petition of Erwin Ross, State Tax Commission Decision).

B. That, the petitioners, Thomas and Gail McGuire, were entitled to deductions for automobile expenses. These expenses were incurred in travel between job sites and were reasonable in amount.

C. That, the petition is granted and the assessed deficiencies are cancelled.

DATED: Albany, New York  
December 30, 1975

STATE TAX COMMISSION

  
RESIDENT

  
COMMISSIONER