

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EDWARD M. and THERESA RUDYS

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 ~~13~~ **22** of the
Tax Law for the Year ~~1968~~ **1969.**

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 **2nd** day of **December**, 19 **75**, she served the within
Notice of Decision ~~XXXXXXXXXXXX~~ by (certified) mail upon **EDWARD M. and**

THERESA RUDYS ~~XXXXXXXXXXXX~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: **Mr. and Mrs. Edward M. Rudys**
Box 117
Sandia Park, New Mexico 87047

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 ~~XXXXXXXXXXXX~~
~~XXX~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this

2nd day of **December**, 19**75**

Mary L. Hoff

Janet Mack

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
EDWARD M. and THERESA RUDYS : DECISION
for Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1969. :

Petitioners, Edward M. and Theresa Rudys, Box 117, Sandia Park, New Mexico 87047, petitioned for a redetermination of a deficiency in personal income taxes under Article 22 of the Tax Law for the year 1969.

The case was submitted for decision on information contained in the file.

ISSUES

I. The first issue is whether expenses incurred in Albany were deductible as business expenses incurred while working away from home.

II. The second issue is whether income reimbursement received for expenses incurred while working in Albany was taxable income.

FINDINGS OF FACT

1. Petitioners, Edward M. and Thesesa Rudys, timely filed a New York State income tax resident return for the year 1969.

2. A Notice of Determination of deficiencies in personal income taxes for the year 1969 plus interest was issued on February 26, 1973, against the taxpayers under File No. 9-44662309.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. Petitioner, Edward M. Rudys, was temporarily employed as a carpenter in Albany, New York, for a period of 26 weeks during the taxable year in question. His employer, Foster-Lipkins Corporation, reimbursed him in the sum of \$3,321.00 for employee businss expenses incurred during this period.

CONCLUSIONS OF LAW

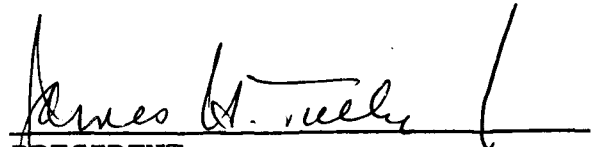
A. Under U.S. Treasury Reg. sec. 1.274-5, petitioner, Edward M. Rudys, has substantiated \$3,406.00 in employee business expenses for the year 1969, since reimbursement arrangements are deemed equivalent to substantiation and adequate accounting to the employer, though no accounting is made, if such allowance does not exceed \$44.00 per day or 15 cents per mile.

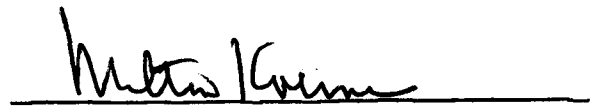
B. Under I.R.C. Sec. 217, an employee need not include as gross income amounts received as reimbursement which are actually incurred, and amounts of actual expense over and above reimbursement is deductible from gross income.

C. The taxpayers petition is sustained. It is determined that there are no deficiencies against petitioners in income tax for the year 1969.

DATED: Albany, New York
December 2, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER