

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NICHOLAS D. and LUCY M. ANCONA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(x) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ 1969. :

State of New York
County of Albany

Catherine Steele, 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 November, 1976, she served the within Notice of Decision by (certified) mail upon Nicholas D. & Lucy M. Ancona (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Nicholas D. Ancona
175 Colfax Avenue
Staten Island, New York 10306
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~ ~~of the~~) petitioner herein and that the address set forth on said wrapper is the last known address of the (~~representative of~~ ~~of the~~) petitioner.

Sworn to before me this

30th day of November, 1976

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

November 30, 1976

TELEPHONE: (518) **457-3850**

Mr. & Mrs. Nicholas D. Ancona
175 Colfax Avenue
Staten Island, New York 10306

Dear Mr. & Mrs. Ancona:

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 deci-
sion must be commenced within **4 months**
from the date of this notice.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
NICHOLAS D. and LUCY M. ANCONA	:	DECISION
	:	
for Redetermination of Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1969.	:	

Petitioners, Nicholas D. and Lucy M. Ancona, residing at 175 Colfax Avenue, Staten Island, New York 10306, 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 1969. (File No. 9-38149973). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 11, 1976, at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

ISSUE

Are amounts expended for meals and lodging allowable deductions under section 162(a)(2) of the Internal Revenue Code, for the year 1969?

FINDINGS OF FACT

1. Petitioners, Nicholas D. and Lucy M. Ancona, timely filed a New York State combined income tax return for 1969.

2. On February 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against petitioner, Nicholas Ancona, with the explanation that, income received for expenses while in Albany constituted taxable income and the expenses incurred while in Albany were nondeductible as Albany was considered to be the petitioners tax home.

3. Petitioners, Nicholas and Lucy Ancona, maintained a permanent residence at 175 Colfax Avenue, Staten Island, New York, during the year 1969.

4. Petitioner, Nicholas Ancona, was employed by Foster Lipkins Corporation as a construction labor foreman. From February, 1968 to April, 1969, he worked at the South Mall construction site in Albany, New York. During 1969 he received compensation in the sum of \$2,549.02 for meal and lodging expenses incurred while at the Albany site. The petitioner spent the week at the Albany job site and returned to his residence at Staten Island on weekends. Lucy Ancona and their children remained at the Staten Island residence during 1969.

5. The duration of employment in the Albany area was for an indefinite period.

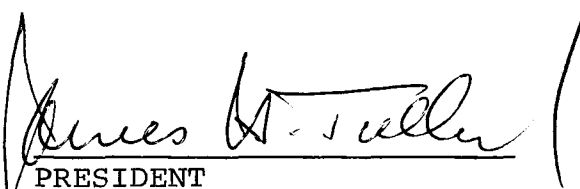
CONCLUSIONS OF LAW

That the petition of Nicholas D. and Lucy M. Ancona is denied and the Notice of Deficiency issued February 26, 1973, is sustained.

The employment of Nicholas Ancona for the period of 14 months in the Albany area was for an indeterminate duration rather than just temporary and cannot be characterized as "away from home" for the purposes of section 162(a)(2) of the Internal Revenue Code.

DATED: Albany, New York
November 30, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER