

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE A. HANNA and OLIVE HANNA

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income Tax
Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1969, 1970 and:
1971

State of New York
County of Albany

MARYLOU SAMUELS

, 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 19th day of November, 1976, she served the within
Notice of Decision ~~(or Determination)~~ by (certified) mail upon George A. Hanna and
Olive Hanna ~~(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. George A. Hanna
631 Caledonia Road
Dix Hills, New York 11746

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

19th day of November, 1976

Marylou Samuels



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

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

November 19, 1976

Mr. and Mrs. George A. Hanna
631 Caledonia Road
Dix Hills, New York 11746

Dear Mr. and Mrs. Hanna:

Please take notice of the **Notice of 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.

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,

PAUL B. COBURN
Supervising Tax
Hearing Supervisor

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE A. HANNA and OLIVE HANNA	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969, 1970 and 1971.	:	

Petitioners, George A. Hanna and Olive Hanna, residing at 631 Caledonia Road, Dix Hills, New York, have filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969, 1970 and 1971. (File No. 00598).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 14, 1976, at 3:00 P.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Arthur R. Rosen, Esq., of counsel).

ISSUE

Whether the petitioner, George A. Hanna, was entitled to deductions under section 162(a)(2) of the Internal Revenue Code for the years 1969, 1970 and 1971 for reimbursements for meals, lodging and transportation while he worked away from Dix Hills, New York.

FINDINGS OF FACT

1. Petitioners, George A. Hanna and Olive Hanna, timely filed joint New York State resident income tax returns for the years 1969, 1970 and 1971.

2. On February 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes for the years 1969, 1970 and 1971 against petitioners, George A. Hanna and Olive Hanna, for failure to include as income, reimbursements for travel, lodging and meals incurred away from home by petitioner, George A. Hanna, in his capacity as a construction superintendent. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,810.79.

3. Petitioners, George A. Hanna and Olive Hanna, maintained a permanent residence at 631 Caledonia Road, Dix Hills, New York during the years in question.

4. Petitioner, George A. Hanna, was employed by the Foster-Lipkins Corporation as a superintendent. Petitioner was employed at the construction of the Swan Street Building in Albany, New York, from September of 1969 to September of 1971, except for a brief termination of employment from August to September of 1970. Petitioner, his wife and his two youngest children lived in Albany during the period in controversy. Petitioners' three remaining children resided in Long Island.

5. Petitioner, George A. Hanna, was reimbursed by the Foster-Lipkins Corporation for expenses incurred for travel, meals and lodging in the years 1969, 1970 and 1971. Petitioner did not include said reimbursements on his income tax return for said years. There was no definite, anticipated duration for the Albany assignment.

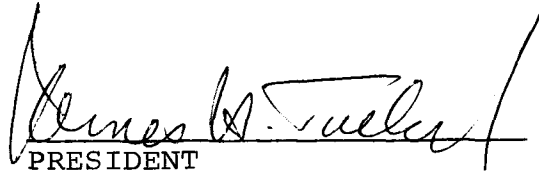
CONCLUSIONS OF LAW

A. That petitioners, George A. Hanna and Olive Hanna, are liable for the additional tax assessed. Petitioner, George A. Hanna, worked approximately 24 months during the years in issue. For purposes of the travel expense deduction, an employment of actual duration of more than one year at a particular location is strongly indicative of a presence beyond a temporary period. The lack of an anticipated duration for the employment period underscores the indefinite nature of the employment. The employment was not temporary and cannot be characterized as "away from home" for the purpose of section 162(a)(2) of the Internal Revenue Code. Albany, New York was petitioner, George A. Hanna's tax home for travel expense purposes and the reimbursements received must be included in petitioner's income.

B. That the petition of George A. Hanna and Olive Hanna is denied and the Notice of Deficiency issued February 26, 1973, is sustained.

DATED: Albany, New York
November 19, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER