

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THEODORE KLUG and ELLEN KLUG

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) ~~or Period(s)~~
1969 and 1970.

AFFIDAVIT OF MAILING

State of New York
County of Albany

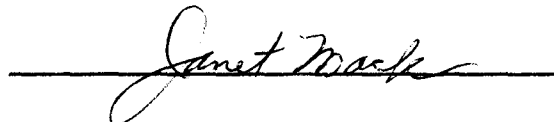
Jean Wager, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 5th day of August, 1976, she served the within
Notice of Decision by (certified) mail upon Theodore Klug and
Ellen Klug ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Theodore and Ellen Klug
14 Marlan Court
Smithtown, New York 11787

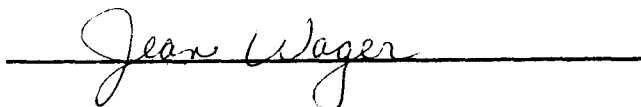
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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 the)~~ petitioner.

Sworn to before me this

5th day of August, 1976.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THEODORE KLUG and ELLEN KLUG

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1969 and 1970.

State of New York
County of Albany

Jean Wager, 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 5th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Charles Becker (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Charles Becker
P.O. Box 1185
Fort Lee, New Jersey 07024
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 the) 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

5th day of August, 1976

Janet Mack

Jean Wager



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 5, 1976

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

Theodore and Ellen Klug
14 Marlan Court
Smithtown, New York 11787

Dear Mr. & Mrs. Klug:

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

Please take further notice that pursuant to
Section(~~20~~) **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 Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioners, Theodore and Ellen Klug, 14 Marlan Court, Smithtown, New York 11787, 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 and 1970. (File No. 0-64400856). 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.

ISSUE

Were the petitioners, Theodore and Ellen Klug, entitled to deductions for the years 1969 and 1970 for amounts expended for meals, lodging and transportation while Theodore Klug worked away from Smithtown, New York?

FINDINGS OF FACT

1. The petitioners, Theodore and Ellen Klug, 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 by petitioner, Theodore Klug, in his capacity as a construction worker during the years 1969 and 1970. It accordingly issued a Notice of Deficiency in the sum of \$787.42.

3. The petitioners, Theodore and Ellen Klug, have maintained a permanent residence at 14 Marlan Court, Smithtown, New York. Prior to 1969, the petitioners' tax home was in Smithtown where Theodore Klug worked and gained employment through his union local.

4. Petitioner, Theodore Klug, was employed by Foster-Lipkin Corporation as a field engineer. From February 1968 to November 1970, he was employed at a construction site in Albany, New York. The petitioners did not change their residence. Petitioner, Ellen Klug, remained in Smithtown. Mr. Klug lived in a motel during his work in Albany and returned to Smithtown on weekends. Mr. Klug received \$5000.00 in 1969 and \$3,600.00 in 1970 from

Foster-Lipkin Corporation in supplemental income for expenses incurred for meals, travel and lodging while working in Albany.

CONCLUSIONS OF LAW

A. That the petitioners, Theodore and Ellen Klug, are liable for the additional tax assessed. The petitioner, Theodore Klug, worked in Albany for 33 months. 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) I.R.C. Albany, New York must be considered the petitioner's tax home for travel expense purposes.

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

DATED: Albany, New York
August 5, 1976

STATE TAX COMMISSION

Bernis W. Tuck

PRESIDENT

Milton Koeman

COMMISSIONER

Thomas H. Griffin

COMMISSIONER