

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALEXANDER SCELZA and DOROTHY SCELZA

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 and 1970

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

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 29th day of April, 1976, she served the within Notice of Decision (~~on Alexander Scelza~~) by (certified) mail upon Alexander Scelza and Dorothy Scelza (~~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. Alexander Scelza
32 Morewood Drive
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 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
29th day of April, 1976
Janet Mack

Marylou Samuels

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALEXANDER SCELZA and DOROTHY SCELZA

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:

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

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 29th day of April, 1976, she served the within
Notice of Decision ~~(or Determination)~~ 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: Mr. 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 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

29th day of April, 1976.

Janet Mack

Marylou Samuels



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

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

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

Dated: Albany, New York
April 29, 1976

Mr. and Mrs. Alexander Scelza
32 Morewood Drive
Smithtown, New York 11787

Dear Mr. & Mrs. Scelza: Please take notice of the **DECISION** of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section ~~601~~ **690** of the Tax Law, any proceeding in court to review an adverse decision 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
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ALEXANDER SCELZA and DOROTHY SCELZA : 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, Alexander Scelza and Dorothy Scelza, residing at 32 Morewood Drive, 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. 0-55962513). Petitioners' representative, Charles Becker, waived in writing a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Were the petitioners, Alexander Scelza and Dorothy Scelza, entitled to deductions under section 162(a)(2), I.R.C. for the years 1969 and 1970 for amounts expended for meals, lodging and

transportation while Alexander Scelza worked away from Smithtown, New York?

FINDINGS OF FACT

1. Petitioners, Alexander Scelza and Dorothy Scelza, 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, Alexander Scelza, in his capacity as a construction worker. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$542.21.

3. Petitioners, Alexander Scelza and Dorothy Scelza, maintained a permanent residence at 32 Morewood Drive, Smithtown, New York during the years 1969 and 1970.

4. Petitioner, Alexander Scelza, was employed by the Foster-Lipkins Corporation as an assistant superintendent of construction. From October 1968 to August, 1970 he was employed at the construction of the South Mall project in Albany, New York. The petitioners did not change their residence. Dorothy Scelza and their children remained at home in Smithtown, New York during the years in issue. Mr. Scelza spent the week at the job site in Albany, returning to

Smithtown on weekends. He received \$5,000 in 1969 and \$2,840 in 1970 from the Foster-Lipkin Corporation for expenses incurred for travel, meals and lodging. There was no definite anticipated duration for the Albany work assignment.

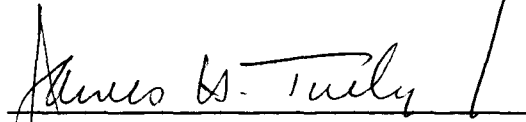
CONCLUSIONS OF LAW


A. That petitioners, Alexander Scelza and Dorothy Scelza, are liable for the additional tax assessed. Petitioner, Alexander Scelza, worked in Albany for 22 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 purposes of Section 162(a)(2) I.R.C. Albany, New York, must be considered petitioner, Alexander Scelza's tax home for travel expense purposes.

B. That the petition is denied.

DATED: Albany, New York
April 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER