

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD TRUJILLO & GAIL TRUJILLO

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 ~~(s)~~ 22 of the  
Tax Law for the Year ~~(x)~~ 1966.

State of New York  
County of Albany

MARY GROFF

, 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 10th day of February, 1976, she served the within

Notice of Decision ~~xxx xxx xxx xxx~~ by (certified) mail upon RICHARD TRUJILLO &

GAIL TRUJILLO (~~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. Richard Trujillo  
18 Colonial Terrace  
Pompton Plains, NJ

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

10th day of February, 1976.

Janet Mack

Mary Groff



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

AREA CODE 518

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER  
(518) 457-3850

DATED: Albany, New York  
February 10, 1976

Mr. & Mrs. Richard Trujillo  
18 Colonial Terrace  
Pompton Plains, NJ

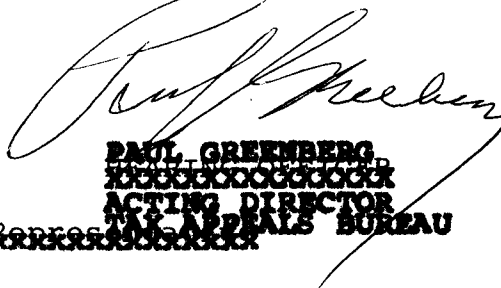
Dear Mr. & Mrs. Trujillo:

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

Please take further notice that pursuant to  
Section(s) **x 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.

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 GREENBERG  
ACTING DIRECTOR  
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
RICHARD TRUJILLO and GAIL TRUJILLO	:	DECISION
	:	
for a Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Year	:	
1966.	:	
	:	
	:	

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Richard Trujillo and Gail Trujillo, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency dated February 19, 1968, in the amount of \$616.42 plus interest of \$28.44 for a total of \$644.86, against which a credit is allowed of \$55.00 as an overpayment claimed on the return, leaving a net amount of \$589.86 due in personal income tax under Article 22 of the Tax Law for the year 1966.

A hearing was duly held on November 1, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioners appeared but were not represented. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Albert J. Rossi, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether or not certain payments made by an employer for certain moving expenses incurred on petitioners' move from California to New Jersey are to be considered New York income when petitioners' move was occasioned by his transfer to a New York work location.

FINDINGS OF FACT

1. Petitioner has at all times been a nonresident of New York. He had been a resident of San Rafael, California prior to 1965. On or about February 1, 1965, he moved to and became a resident of Lindenhurst, New Jersey.

2. Petitioner was an employee of Corn Products Company of 717 Fifth Avenue, New York City. He had worked in California for the company and his change in residence was occasioned by a transfer and promotion to the New York accounting offices of the company.

3. The Corn Products Company paid for certain expenses and losses which petitioner incurred in connection with his transfer. These expenses and losses totaled \$8,842.00 and were as follows:

(a) Mortgage payments on a California house from February 1, 1965, until the house was sold in 1966, and insurance, utilities and upkeep expense on the house all of which totaled \$2,414.00.

(b) The selling expenses of the California house including broker's commission, mortgage discount, sewer assessment, termite clearance and other expenses all totaling \$3,392.00.

(c) The loss on the sale of the California house of \$1,276.00.

(d) A Federal tax allowance computed at 25% of the total of the other expenses of \$7,082.00 for the amount of \$1,770.00.

4. The amount of the expenses and losses in question, \$8,842.00 was added to petitioner's income for 1966 as stated on the withholding tax statement prepared by petitioner's employer.

5. Petitioner did not include the amount in question on his New York tax return although he had reported it on his Federal return.

CONCLUSIONS OF LAW

The petitioners, who were at all times nonresidents of New York, are taxable on the net amount of items of income which enter into their Federal adjusted gross income which are "derived from or connected with New York sources..." (Tax Law section 632(a)(1)(B)). These include items of income attributable to an occupation carried on in New York (Tax Law section 632(b)(1)(B)).

Such items of income attributable to an occupation carried on in New York should reasonably include the reimbursement, at issue in this case, for moving expenses incurred in connection with a transfer to a job location in New York. This is not only a reasonable position, it is also consistent with the treatment of moving expenses for Federal income tax purposes.

The Internal Revenue Code and the Internal Revenue Service have characterized the reimbursement of moving expenses as "attributable to the performance of services if made because of the employer-employee relation" (U.S. Treas. Reg. 1.82-1(a)(5) applicable to calendar years 1970 and following). They have similarly characterized moving expenses themselves as incurred "in connection with" the commencement of work at a new job location (I.R.C. 217(a)). And such expenses (with limitations) are deductible from Federal gross income to reach adjusted gross income by reason of I.R.C. section 62(8). This is true of both the direct and indirect expenses of a move.

The direct expenses are deductible under I.R.C. section 217 (applicable to calendar years 1964 and following) and the petitioner in this case so deducted them, in effect, by not reporting either such expenses or the employer's reimbursement of such expenses. This would seem to be an admission by petitioner that such expenses are, in fact, related to the new employment (see Hartung 55 U.S. Tax Court 1, dissenting opinion of Drennen, J. at page 4). Such direct expenses when incurred in a move to a foreign nation have been held "allocable or chargeable against" the earned income from foreign sources excluded from income under I.R.C. section 911 (Hartung v. Comm'r 484 F2d 953 reversing 55 U.S. Tax Court 1 and adopting the opinion of Sterrett, J., 55 U.S. Tax Court 1, at page 5).

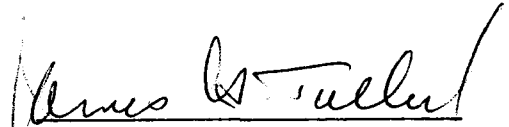
The indirect expenses of a move including expenses incident to the sale and purchase of homes, are deductible, with limitations, under the same I.R.C. section 217 for calendar years 1970 and following. The fact that such expenses are not deductible during the years in issue in this case does not, however, imply that they are unrelated to income (see Hartung, 55 U.S. Tax Court 1, opinion of Sterrett, J., footnote 1). To the extent that such indirect expenses are deductible on the Federal return, as they are to some extent beginning in 1970, they would to that extent reduce Federal adjusted gross income and also the New York adjusted gross income of a taxpayer being transferred to a job location in New York State with the result that the increased income from reimbursement would be reached by the amount of such expenses.


DECISION

The deficiency is correct and is due together with such interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York  
February 10, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

STATE OF NEW YORK  
 Department of Taxation and Finance  
 STATE CAMPUS  
 ALBANY, N. Y. 12227

*43-507*  
*100-507*



Mr. & Mrs. Richard Trujillo  
 18 Colonial Terrace  
 Pompton Plains, NJ

SS#520  
 30  
 0433

No letter  
 address in  
 Income Tax  
 Bureau. Have  
 no record  
 of Trujillo  
 filing since this.





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

AREA CODE 518

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HEARING UNIT

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~~HEARING UNIT~~  
ACTING DIRECTOR  
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Enc.

cc: ~~Division of Taxation~~  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD TRUJILLO and GAIL TRUJILLO

DECISION

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for Refund of Personal Income Taxes under  
Article 22 of the Tax Law for the Year  
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DECISION

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DATED: Albany, New York  
February 10, 1976

STATE TAX COMMISSION

James A. Tuck  
PRESIDENT

Milton Koenig  
COMMISSIONER