

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERT WEINBERG

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

Janet Mack, 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 28th day of September, 1976, she served the within Decision by (certified) mail upon Herbert Weinberg

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Herbert Weinberg
31 Disc Lane
Wantagh, NY 11793

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)~~ ~~xxxxxxx~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ ~~xxxxxxxxxxxx~~ petitioner.

Sworn to before me this

28th day of September, 1976.

Mary Duff

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

September 28, 1976

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

Mr. Herbert Weinberg
31 Disc Lane
Wantagh, NY 11793

Dear Mr. Weinberg:

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

Please take further notice that pursuant to
Section **(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.

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: ~~Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HERBERT WEINBERG :
for Redetermination of Deficiency or for : DECISION
Refund of Personal Income Taxes under Article :
22 of the Tax Law for the Years 1969 and 1970. :

Petitioner, Herbert Weinberg, 31 Disc Lane, Wantagh, New York 11793, has filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for 1969 and 1970. (File No. 0-64534414). 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 June 11, 1976, at 10:45 A.M. Petitioner was represented pro se. The Income Tax Bureau was represented by Peter Crotty, Esq., (William Fox, Esq., of counsel).

ISSUE

Was the petitioner, Herbert Weinberg, entitled to deduct disbursements for meals and lodging for the years 1969 and 1970 while he worked away from his Wantagh residence under section 162(a)(2), Internal Revenue Code.

FINDINGS OF FACT

1. Petitioner, Herbert Weinberg, timely filed forms IT-201, New York State Income Tax Resident Returns for the years 1969 and 1970.
2. On February 26, 1973 the Income Tax Bureau issued a statement of audit changes against the petitioner, which indicated that other compensation received for expenses, constituted taxable income; and that expenses incurred while in Albany were nondeductible, as Albany was considered to be the petitioner's tax home. In accordance with the statement of audit changes,

the Income Tax Bureau issued a Notice of Deficiency in the amount of \$652.86.

3. Petitioner, Herbert Weinberg, maintained a permanent residence at 31 Disc Lane, Wantagh, New York, during the years 1969 and 1970.

4. Petitioner, Herbert Weinberg, was employed as a construction superintendent by numerous construction companies during 1969 and 1970. One of his employers was Foster Lipkins Corporation from whom he received \$5,160.00 in 1969 and \$2,340.00 in 1970 for meal and lodging expenses incurred while being away from his residence. Of the expense reimbursement received in 1969, \$1,110.00 constituted expenses, incurred at the South Mall project in Albany and \$4,050.00 was for expense incurred at the Rochester site.

5. Petitioner, Herbert Weinberg, was assigned to various construction sites away from his Wantagh residence. He was employed at a construction site in the Rochester, New York area from January, 1968 until June, 1969. This assignment when accepted by the petitioner was for an indefinite duration. During the period from December, 1969 to April, 1970, he was temporarily employed at the South Mall project in Albany, New York.

CONCLUSIONS OF LAW

A. That the travel expenses claimed by petitioner in connection with his assignment in Rochester during the year 1969 are not considered "away from home" expenses within the meaning of section 162(a)(2) of the Internal Revenue Code. The employment of petitioner, Herbert Weinberg, at the Rochester construction site for the duration of a 17-month period, which concluded in June, 1969, was for an indefinite period and not merely temporary. Regulation 1.162-2 states in part that "employment is indefinite

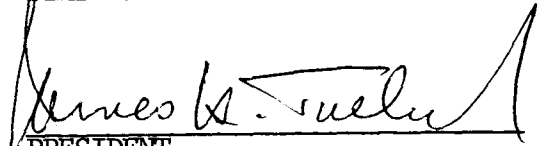
if it cannot be seen that termination of the employment will occur within a fixed or reasonably short period."

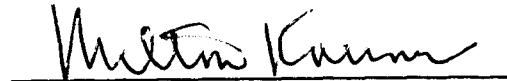
B. That the travel expenses claimed by petitioner, Herbert Weinberg, in connection with his temporary work assignment from December, 1969 to April, 1970 are considered "away from home" expenses within the meaning of section 162(a)(2) of the Internal Revenue Code.

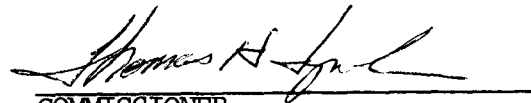
C. That the petition of Herbert Weinberg is granted to the extent that travel expenses of \$1,110.00 in 1969 and \$2,340.00 in 1970 are deductible "away from home" expenses. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued February 26, 1973, and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
September 28, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER