

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CHRISTOPHER and DOROTHY POLITO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(x)~~ 22 of the
Tax Law for the Year(s) ~~or Period(s)~~
1969, 1970 and 1971.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 12th day of May, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Christopher & Dorothy
Polito (~~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. Christopher Polito
RD #2, Box 489
Averill Park, New York 12018

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
12th day of May, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
CHRISTOPHER and DOROTHY POLITO
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (x) 22 of the
Tax Law for the Year(s) ~~or Period(s)~~
1969, 1970 and 1971

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 12th day of May, 1977, he served the within
Notice of Decision by (certified) mail upon Eugene Steiner &
Paul H. Wein (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Eugene Steiner & Paul H. Wein, Esqs.
Steiner and Steiner
90 State Street
Albany, New York 12207
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
12th day of May, 1977.

Bruce Batchelor

Janet Mach



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

May 12, 1977

TELEPHONE: (518) 457-1723

Mr. & Mrs. Christopher Polito
RD #2, Box 489
Averill Park, New York 12018

Dear Mr. & Mrs. Polito

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

Please take further notice that pursuant to
Section **(E) 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: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHRISTOPHER and DOROTHY POLITO : DECISION
for Redetermination of Deficiency or for :
Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Years :
1969, 1970 and 1971. :
:

Petitioners, Christopher and Dorothy Polito, residing at R.D. #2, Box 489, Averill Park, New York 12018, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1969, 1970 and 1971. (File No. 1-76892889). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building #9, Albany, New York, on January 17, 1977 at 10:45 A.M. Petitioner, Christopher Polito, appeared pro se and for his wife, and by Eugene Steiner, Esq. and Paul H. Wein, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Harry Kadish, Esq., of counsel).

ISSUE

Were petitioners, Christopher and Dorothy Polito, entitled to deductions under section 162(a)(2) of the Internal Revenue Code for amounts expended by petitioner, Christopher Polito, for expenses and subsistence while employed in an area away from his Valley Stream, New York residence during the years 1969, 1970 and 1971?

FINDINGS OF FACT

1. Petitioners, Christopher and Dorothy Polito, filed timely 1969, 1970 and 1971 joint New York State personal income tax returns.

2. On February 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners upon the grounds that unreported reimbursements for living expenses received by petitioner, Christopher Polito, from his employer, constituted taxable income and that the expenses incurred while working in Albany were nondeductible as Albany was considered to be his tax home. In accordance with the Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency for the years 1969, 1970 and 1971 in the amount of \$3,643.86 additional personal income tax due, plus \$391.74 interest, for a sum of \$4,035.60.

3. During the year 1968, petitioners, Christopher and Dorothy Polito, resided in Valley Stream, New York. On December 16, 1968, petitioner, Christopher Polito, entered into a written employment contract with Psaty & Fuhrman Inc. He was to supervise concrete construction at the South Mall in Albany. Under the terms of the contract petitioner, Christopher Polito, received a salary plus supplemental compensation for expenses and subsistence. The amounts of supplemental compensation received in addition to salary were \$11,430.00 in 1969, \$12,480.00 in 1970 and \$12,480.00 in 1971.

4. The period of employment as stated in the employment contract was "for such period as shall be necessary for the complete performance of the concrete work."

5. During all of 1969 and up to September 15, 1970, petitioner, Christopher Polito, lived in rented quarters during the week and returned to his Valley Stream home and family on weekends. Petitioner, Christopher

Polito, acquired a home near Albany in Averill Park, New York and on September 15, 1970 he and his family moved into this home and live there to this date.

CONCLUSIONS OF LAW

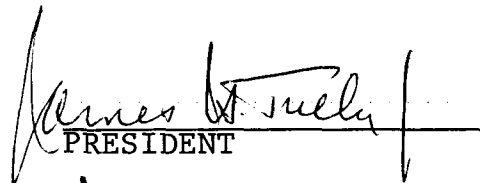
A. That the employment of petitioner, Christopher Polito, during the period from January 1, 1969 to September 15, 1970 in the Albany area, was for an indeterminate duration rather than just temporary in nature and cannot be characterized as "away from home" in accordance with the meaning and intent of section 162(a)(2) of the Internal Revenue Code.

B. That from September 16, 1970 to December 31, 1971, petitioner's tax home remained in the Albany area and the supplemental income was includable as income and no deduction was allowable for expenses and subsistence as these were personal expenses and nondeductible.

C. That the petition of Christopher and Dorothy Polito is denied and the Notice of Deficiency issued February 26, 1973 for the years 1969, 1970 and 1971 is sustained.

DATED: Albany, New York
May 12, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER