

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH and SYLVIA SAGULA

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 and 1970.

State of New York
County of Albany

John Huhn , 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 17th day of April , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Joseph & Sylvia Sagula

(~~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. Joseph Sagula
683 East 223rd Street
Bronx, New York 10466

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

17th day of April , 1978.





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State of New York
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~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of April, 1978, ~~she~~ he served the within
Notice of Decision by (certified) mail upon Charles H. Spiegel

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Charles H. Spiegel, Esq.
606 Castle Hill Avenue
Bronx, New York 10473

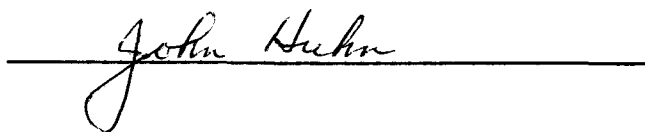
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(post office or official depository) under the exclusive care and custody of
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of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

17th day of April, 1978







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

April 17, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Mr. & Mrs. Joseph Sagula
683 East 223rd Street
Bronx, New York 10466**

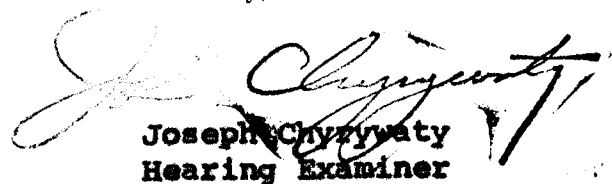
Dear Mr. & Mrs. Sagula:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(x) **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


**Joseph Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOSEPH and SYLVIA SAGULA : 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, Joseph and Sylvia Sagula, 683 East 223rd Street, Bronx, New York 10466, 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. 00670).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 9, 1977 at 10:45 A.M. The petitioners appeared by Charles H. Spiegel, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether Albany was considered to be petitioner's tax home for income tax purposes and, if so, whether reimbursement received for travel and living expenses constituted additional taxable income during the years 1969 and 1970.

FINDINGS OF FACT

1. Petitioner Joseph Sagula, a carpenter, residing with his wife and children at 683 East 223rd Street, Bronx, New York, was hired in 1969 to work at a construction site in Albany, New York, known as the "Albany Mall Project". He was told that the duration of his employment at the Albany job site would be for a period of six months and he was shown a construction schedule which verified the anticipated duration.

2. In prior years while residing in New York City, Mr. Sagula worked on various occasions at locations away from his family residence. He was employed as a carpenter in the Albany area for three months in 1962, three to four months in 1964 and in the Rochester area for five months in 1967.

3. During the years 1969 and 1970, Mr. Sagula worked in Albany on weekdays and returned to his family in New York City on weekends. He was required to report the living and travel expenses he incurred during the weekdays to his employer, who reimbursed him for such expenses.

4. A representative of Mr. Sagula's employer testified that the petitioner was hired for a six-month period, but due to unforeseen delays beyond their control, the job assignment actually lasted fifteen months.

5. Mr. Sagula contended that due to family obligations and responsibilities, he would not knowingly have accepted a job assignment away from home for any period in excess of six months.

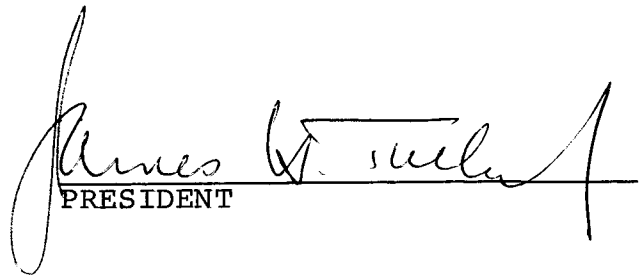
CONCLUSIONS OF LAW

A. That petitioner Joseph Sagula's job assignment in Albany during 1969 and 1970 was of a temporary nature. The permanent or temporary nature of a job is judged at the time it begins and not by later events. (Gardin, 64 T.C. 103 9-24-75.) Therefore, petitioner's tax home remained New York City and petitioner Joseph Sagula properly excluded from New York gross income the reimbursement of expenses received from his employer in accordance with Internal Revenue Regulation 1.274-5(e)(i).

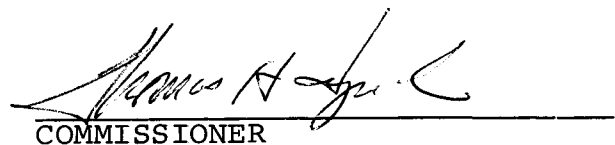
B. The petition of Joseph and Sylvia Sagula is granted and the Notice of Deficiency issued February 26, 1973 is cancelled.

DATED: Albany, New York
April 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER