

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH and DOROTHY SANDMAN

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)~~ ~~1972~~ ~~(s)~~ 1972. :

State of New York
County of Albany

John Huhn , 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 25th day of August , 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Joseph & Dorothy Sandman

~~(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 Sandman
860 East Broadway
Long Beach, New York 11561

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

25th day of August , 1978.







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

August 25, 1978

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

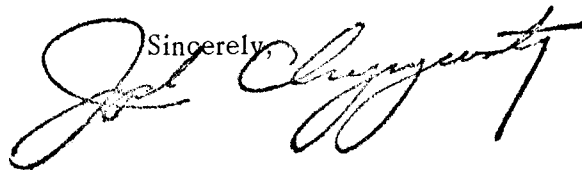
**Mr. & Mrs. Joseph Sandman
860 East Broadway
Long Beach, New York 11561**

Dear Mr. & Mrs. Sandman:

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 ~~28~~ **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: ~~Taxing Bureau's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH and DOROTHY SANDMAN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioners, Joseph and Dorothy Sandman, 860 East Broadway, Long Beach, New York 11561, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 11756).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 29, 1977 at 1:15 P.M. The petitioner appeared pro se and for his wife, petitioner Dorothy Sandman. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether petitioners are entitled to a deduction on their 1972 return for travel and away-from-home expenses incurred by Joseph Sandman in connection with his employment.

FINDINGS OF FACT

1. Petitioners, Joseph and Dorothy Sandman, filed a joint New York State income tax resident return for 1972, on which they claimed a deduction for travel and away-from-home expenses incurred by Joseph Sandman while he was working in the State of Florida.

2. On December 6, 1974, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners, asserting additional personal income tax of \$628.79 for 1972. This was done on the grounds that the travel and away-from-home expenses claimed by petitioners were not deductible on their income tax return. Accordingly, the Income Tax Bureau issued a Notice of Deficiency on October 27, 1975.

3. During 1972 the petitioners maintained a permanent residence at 119 Murray Drive, Oceanside, New York.

4. In January of 1972, petitioner Joseph Sandman was terminated from a position which he had held in the New York area for 22 years.

5. In March of 1972, petitioner Joseph Sandman was offered and accepted the position of starting and managing a factory in Hialeah, Florida, for Washington Knitting Mills, Inc. He contended that he was hired for an indeterminable time.

6. Petitioner Joseph Sandman worked in Hialeah, Florida, at one location from March 30, 1972 until October 19, 1972, at which time he resigned and returned to New York.

7. During the period which petitioner Joseph Sandman worked in Florida, he lived in a hotel while his wife and child remained at their permanent place of residence in Oceanside, New York.

8. Petitioner was not reimbursed by his employer for any of the expenses taken as traveling expense deductions on petitioner's 1972 income tax return.

CONCLUSIONS OF LAW


A. That petitioner Joseph Sandman's employment in Hialeah, Florida, was permanent and not merely temporary; therefore, the petitioners tax home was Hialeah, Florida. Accordingly, he may not deduct travel and away-from-home expenses incurred in connection with his employment pursuant to section 162(a)(2) of the Internal Revenue Code.

B. That the petition of Joseph and Dorothy Sandman is denied and the Notice of Deficiency issued October 27, 1975 is sustained, together with such interest as may be lawfully due.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER