

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

VINCENT A. D'AMICO and STELLA S. D'AMICO

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) ~~xxxPeriod(s)~~ 1969,  
1970, and 1971.

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 6th day of April, 1979, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Vincent A. D'Amico  
and Stella S. D'Amico ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Vincent A. D'Amico and Stella S. D'Amico  
255 East Marshall Street  
Hempstead, New York 11550  
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)~~  
~~xxxPeriod(s)~~ 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

6th day of April, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

VINCENT A. D'AMICO and STELLA S. D'AMICO

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) ~~1968~~ 1969, :  
1970, and 1971.

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 6th day of April, 1979, she served the within  
Notice of Decision by (certified) mail upon Hill M. Lalin, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Hill M. Lalin, Esq.  
J. H. Cohn & Company  
810 Broad Street  
Newark, NJ 07102  
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.

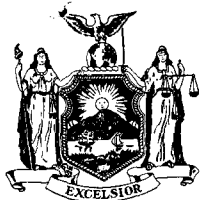
That deponent further says that the said addressee is the (representative  
of the) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (representative of the) petitioner.

Sworn to before me this

6th day of April, 1979.

Marilyn J. Papineau

John Huhn



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

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

April 6, 1979

Vincent A. D'Amico and Stella S. D'Amico  
235 East Marshall Street  
Hempstead, New York 11550


Dear Mr. and Mrs. D'Amico:

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(s) ~~890~~ 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 Chirgany  
Hearing Examiner

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
VINCENT A. D'AMICO and STELLA S. D'AMICO : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article :  
22 of the Tax Law for the Years 1969, 1970 :  
and 1971. :

---

Petitioners, Vincent A. D'Amico and Stella S. D'Amico, 255 East Marshall Street, Hempstead, New York 11550, 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, 1970 and 1971 (File No. 00661).

A small claims hearing was held before Havry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 19, 1978 at 9:15 A.M. Petitioner Vincent A. D'Amico appeared pro se and for his wife, petitioner Stella S. D'Amico and by Hill M. Lalin, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner Vincent A. D'Amico could exclude from taxable income, amounts received from his employer for living and travel expenses while working away from home, and whether he was entitled to deductions for said expenses incurred under section 162(a)(2) of the Internal Revenue Code for 1969, 1970 and 1971.

FINDINGS OF FACT

1. Petitioners, Vincent A. D'Amico and Stella S. D'Amico, timely filed New York State personal income tax returns for 1969, 1970, and 1971, on which they failed to include supplemental living expense allowances received by petitioner Vincent A. D'Amico from his employer.

2. On April 13, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, on the grounds that unreported reimbursements for living and travel expenses received by petitioner Vincent A. D'Amico from his employer, constituted taxable income. It was also issued on the grounds 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 on April 13, 1973 for 1969, 1970 and 1971, in the amount of \$1,885.64 in personal income tax, plus \$211.29 in interest, for a sum of \$2,096.93.

3. During 1967 petitioner Vincent A. D'Amico, accepted employment at the South Mall construction project in Albany, New York. The employment period was expected to last until December 31, 1969; however, due to delays, it continued until 1972. Petitioner was provided with a living allowance while employed in Albany in addition to his wages. He received \$3,750.00 in 1969, \$4,775.00 in 1970 and \$5,250.00 in 1971.

4. During the years at issue, petitioners maintained a permanent place of abode in Hempstead, New York. Petitioner Vincent A. D'Amico worked at the job site in Albany during the week and returned home on the weekend. There was no definite duration for the Albany work assignment.

CONCLUSIONS OF LAW

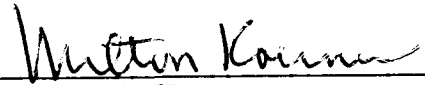
A. That petitioner Vincent A. D'Amico's employment in Albany, New York, during 1969, 1970, and 1971 was for an indeterminate duration and was not temporary in nature. Therefore, he is not considered to have been "away from home" during said years; thus, the amounts that he received from his employer for living and travel expenses were not excludable from taxable income, nor were the living expenses deductible, in accordance with the meaning and intent of section 162(a)(2) of the Internal Revenue Code.

B. That the petition of Vincent A. D'Amico and Stella S. D'Amico is denied and the Notice of Deficiency issued April 13, 1973 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
April 6, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER