

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CRESENDO DURSO

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

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 24<sup>th</sup> day of January , 19 79, she served the within  
Notice of Decision by (certified) mail upon Cresendo Durso  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Cresendo Durso  
601 East 88th Street  
Brooklyn, NY 11236

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~~  
~~XXXXX~~) 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

24<sup>th</sup> day of January , 1979.

Maileyn 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

January 24, 1979

**Cresendo Durso**  
**601 East 88th Street**  
**Brooklyn, NY 11236**

**Dear Mr. Durso:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section **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 **four 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 Chyrywat**  
**Hearing Examiner**

cc: ~~Department of Taxation and Finance~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|                                      |   |          |
|--------------------------------------|---|----------|
| In the Matter of the Petition        | : |          |
| of                                   | : |          |
| CRESENDO DURSO                       | : | 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.       | : |          |

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Petitioner, Cresendo Durso, 601 East 88th Street, Brooklyn, New York 11236, 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. 00666).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 17, 1977 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

#### ISSUE

Whether Albany, New York, was considered to be petitioner's tax home for income tax purposes during 1969, 1970 and 1971 and if so, did supplemental income received for living expenses in said years constitute additional taxable income.

1. Petitioner, Cresendo Durso, timely filed New York State personal income tax returns for 1969, 1970 and 1971. On these returns, he failed to report supplemental income which he received from his employer, P.J. Carlin Construction Company, for living expense reimbursements while he worked at the South Mall construction site in Albany, New York.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioner. This was done on the grounds that unreported reimbursements for living expenses received by petitioner 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. Accordingly, it issued a Notice of Deficiency on April 13, 1973 for 1969, 1970 and 1971 in the amount of \$1,333.01 in personal income tax, plus \$145.70 interest, for a total of \$1,478.71.

3. Petitioner was a resident of Brooklyn, New York. He was hired by P. J. Carlin Construction Company to work as a general labor foreman in Albany, New York, for an indefinite period of time. While working in Albany, petitioner first lived in a motel and subsequently in a furnished apartment. He returned to his residence in Brooklyn on weekends. His employer paid him supplemental living expenses of \$3,750.00 in 1969, \$3,900.00 in 1970 and \$4,775.00 in 1971.

#### CONCLUSIONS OF LAW

A. That the employment of petitioner, Cresendo Durso, during 1969, 1970 and 1971 was for an indeterminate duration rather than 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 during 1969, 1970 and 1971, petitioner's tax home was in the Albany area and the supplemental income was includable as income; therefore, no deduction was allowable for expenses and subsistence, as these were personal expenses and, as such, nondeductible.

C. That the petition of Cresendo Durso 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

January 24, 1979

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER