

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN J. EDWARDS

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  
He 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, He served the within  
Notice of Decision by (certified) mail upon John J. Edwards  
~~(REPRESENTATIVE OF)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: John J. Edwards  
150 Lounsbury Place  
Kingston, NY 12401

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)~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(REPRESENTATIVE OF)~~ petitioner.

Sworn to before me this

24<sup>th</sup> day of January , 19 79

Marilyn J. Pafaneau

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

John J. Edwards  
150 Lounsbury Place  
Kingston, NY 12401

Dear Mr. Edwards:

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 ~~(a)~~ **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 Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JOHN J. EDWARDS : 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, John J. Edwards, 150 Lounsbury Place, Kingston, New York 12401, 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. 00674).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on December 22, 1977 at 11:30 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner was entitled to deductions under section 162(a)(2) of the Internal Revenue Code for reimbursement for meals, lodging and transportation expenses incurred while he worked away from Woodstock and Kingston, New York.

FINDINGS OF FACT

1. Petitioner, John J. Edwards, timely filed New York State personal income tax returns for 1969, 1970 and 1971.

2. On April 13, 1973, the Income Tax Bureau issued a Statement of Audit Changes for 1969, 1970 and 1971 against petitioner. This was done on the grounds that he failed to include as income, reimbursement which he received from his employer for travel, lodging and meal expenses incurred by him while working in Albany away from his home. Accordingly, it issued a Notice of Deficiency to petitioner in the sum of \$755.63.

3. Petitioner maintained a permanent place of abode in Woodstock, New York, during 1969 and 1970 and in nearby Kingston, New York, in 1971.

4. Petitioner was employed by P.J. Carlin Construction and Atlas Tile and Marble Company as an engineer at the South Mall Construction site in Albany, New York. Besides his weekly salary, petitioner received a living allowance which he used mainly for expenses incurred in commuting from his home to the job site and back again each day.

5. Petitioner was hired by his employer to work for an indefinite period of time in Albany.

#### CONCLUSIONS OF LAW

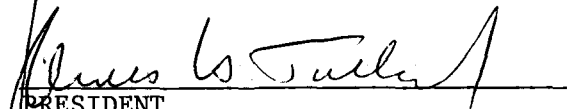
A. That the employment of petitioner, John J. Edwards, in Albany during 1969, 1970 and 1971 was for an indeterminate duration, rather than just temporary in nature and cannot be characterized as "away from home," in accordance with the meaning and intent of section 162(a)(2) of the Internal Revenue Code.

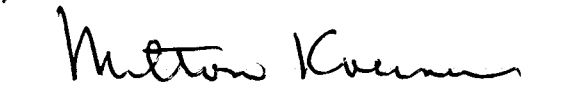
B. That since petitioner's tax home was in Albany during 1969, 1970 and 1971, the supplemental payments he received were includable as income and no deduction was allowable for expenses, as these were personal expenses and thus nondeductible.

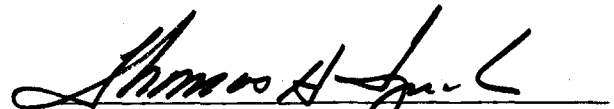
C. That the petition of John J. Edwards is denied and the Notice of Deficiency issued April 13, 1973 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
January 24, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER