

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Anthony & Joyce Catalina :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1973. :

State of New York
County of Albany

Jay Vredenburg, 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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Anthony & Joyce Catalina, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony & Joyce Catalina
Weaver Rd., RD
Watertown, NY 13601

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
14th day of August, 1981.

Annice D. Haglund

J. Vredenburg

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

August 14, 1981

Anthony & Joyce Catalina
Weaver Rd., RD
Watertown, NY 13601

Dear Mr. & Mrs. Catalina:

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) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ANTHONY J. CATALINA and JOYCE S. CATALINA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1973.	:	

Petitioners, Anthony J. Catalina and Joyce S. Catalina, Weaver Road, RD #2, Watertown, New York, 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 1973 (File No. 11952).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on May 15, 1980 at 1:15 P.M. Petitioners, Anthony J. Catalina and Joyce S. Catalina, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether amounts expended for travel expenses for 1973 are allowable deductions under section 162(a)(2) of the Internal Revenue Code.

FINDINGS OF FACT

1. Petitioners, Anthony J. Catalina and Joyce S. Catalina, filed a New York State Combined Income Tax Return for 1973.

2. On May 19, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners for additional income tax in the amount of \$355.33 plus interest of \$29.13 for a total due of \$384.86. The explanation was that:

"It was determined that your tax home changed as a result of an indefinite job assignment. Therefore, the travel expenses are not deductible."

3. During the taxable year 1973, petitioners maintained their residence in Watertown, New York. Petitioner Joyce S. Catalina is a party to this action only by virtue of having her name on Notice of Deficiency and, therefore, Anthony Catalina will hereafter be referred to as petitioner.

4. Petitioner is an electrician and a member of International Brotherhood of Electrical Workers. Petitioner's local affiliation is with Local Union #910 in the City of Watertown, New York.

5. Prior to the year in question, petitioner had been employed in the Watertown area for approximately 25 years. Until the latter part of 1972, most jobs taken by petitioner were in the vicinity of Watertown where he and his wife maintain their home. Petitioner's wife is employed in Watertown for the city school district.

6. Sometime in the first part of 1972, economic conditions were such that construction work in the Watertown area suffered a slow down. Petitioner contacted his local union in search of new employment. The union found work for him in Oswego, New York (Local Union # 328 jurisdiction) with Lord/Comstock - A Joint Venture, an electrical contractor on a nuclear power plant then under construction. Petitioner accepted the position and in July 1972, commenced work in Oswego. At the time of accepting the job, petitioner did not know how long the position would last. Petitioner worked on an hourly basis under the supervision of Lord/Comstock's permanent employees.

7. During petitioner's employment with Lord/Comstock he stayed at home in Watertown and drove to and from work each day, a round trip of 120 miles. In May 1974 petitioner found work in Watertown and terminated his employment with

Lord/Comstock. The total time of employment in Oswego, New York, was approximately 23 months.

CONCLUSIONS OF LAW

A. That petitioner Anthony J. Catalina's employment in Oswego, New York, during 1973 was for an indefinite duration rather than just temporary in nature. Therefore, he cannot be considered to have been "away from home" during said years. Thus, the amounts for travel expenses which he incurred were personal expenses and not business expenses, in accordance with the meaning and intent of section 162(a)(2) of the Internal Revenue Code.

B. That the petition of Anthony J. Catalina and Joyce S. Catalina is denied and the Notice of Deficiency issued May 19, 1975 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER