

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Louis A. & Joanne E. Corbelli :
: 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 :
1972. :

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 Louis A. & Joanne E. Corbelli, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis A. & Joanne E. Corbelli
111 Bradberry Dr.
Monroeville, PA 15146

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.

Carrie A. Haglund

J. Vredenburg

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

August 14, 1981

Louis A. & Joanne E. Corbelli
111 Bradberry Dr.
Monroeville, PA 15146

Dear Mr. & Mrs. Corbelli:

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 :
LOUIS A. CORBELLI and JOANNE E. CORBELLI : 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, Louis A. Corbelli and Joanne E. Corbelli, 111 Bradberry Drive, Monroeville, Pennsylvania 15146, 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. 14661).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Room 1300, Rochester, New York, on July 19, 1979 at 2:45 P.M. Petitioner Louis A. Corbelli appeared pro se and for his wife, Joanne E. Corbelli. The Audit Division appeared by Peter Crotty, Esq. (Kathy L. Sanderson, Esq., of counsel).

ISSUE

Whether petitioner Louis A. Corbelli may 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 a deduction for said expenses under section 162(a)(2) of the Internal Revenue Code.

FINDINGS OF FACT

1. Petitioners, Louis A. Corbelli and Joanne E. Corbelli, timely filed a joint New York State Income Tax Resident Return for 1972, on which they deducted

a supplemental living expense allowance of \$5,690.00 received by petitioner Louis A. Corbelli from his employer.

2. On August 31, 1973, petitioners, Louis A. Corbelli and Joanne E. Corbelli, filed an amended New York State Income Tax Resident Return for 1971 on which they deducted a supplemental living expense allowance of \$5,989.00 received by petitioner Louis A. Corbelli from his employer that was not claimed on their original return. The amended return was based on an audit made by the Internal Revenue Service which found that petitioner Louis A. Corbelli was on temporary assignment and allowed the deduction for said expenses incurred for said year. The Income Tax Bureau took no further action on petitioners' claimed refund other than to associate the amended 1971 New York State return with their 1972 New York State income tax return.

3. On June 6, 1974, the Income Tax Bureau issued a Statement of Audit Changes for 1972 against petitioners on the grounds that "when an employee is assigned to a post of duty for more than one year, the assignment changes in nature from temporary to indefinite. Travel, meals and lodging expenses incurred on an indefinite assignment are not deductible, and any reimbursement or per diem received for such an assignment must be reported as taxable income". In accordance with the Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency on January 27, 1975 for 1972 in the amount of \$605.18 in personal income tax, plus \$81.07 in interest, for a sum of \$686.25.

4. The WEDCO Corporation was a subsidiary of Westinghouse Electric Corporation. WEDCO was incorporated in August, 1969 specifically for the purpose of completing construction of the Indian Point Nuclear Power Plants, (Units #2 and #3) near Buchanan, New York for the Consolidated Edison Company. At the time WEDCO was incorporated, petitioner Louis A. Corbelli was employed

by Westinghouse as a Senior Government Contract Auditor and was working in Baltimore, Maryland. In December, 1969, petitioner Louis A. Corbelli accepted an assignment as manager of financial planning for the WEDCO Corporation. He began working at the Indian Point Nuclear Power Plant in December of 1969 and continued working at that location until February 1976.

5. In December, 1969, petitioner Louis A. Corbelli moved from Baltimore, Maryland and his family moved from Rochester, New York to a rented home in Fishkill, New York which was near the Indian Point Nuclear Power Plant. He rented his home in Rochester, New York until it was sold in mid or late 1970.

6. During 1972 petitioner Louis A. Corbelli was paid a special fixed site allowance of \$500.00 per month from January through July, 1972 and \$438.00 per month from August through December, 1972.

7. The following paragraph was taken from a letter dated November 22, 1972 from WEDCO Corporation to petitioner Louis A. Corbelli:

"At the time WEDCO was incorporated, it was anticipated that construction would be completed on or about June, 1972 and your assignment to WEDCO would be completed. However, due to circumstances beyond our control, the estimated completion dates for the plants have slipped beyond the June, 1972 date. Accordingly, your services will be required for an additional period of time."

CONCLUSIONS OF LAW

A. That petitioner Louis A. Corbelli's employment in Indian Point, New York, during 1972 was for an indefinite duration rather than temporary in nature. Therefore, he cannot be considered to have been "away from home" during said years. In fact, he lived with his family in the area of his employment; thus, the amounts which he received from his employer for living expenses were not excludable from taxable income, and the living 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.

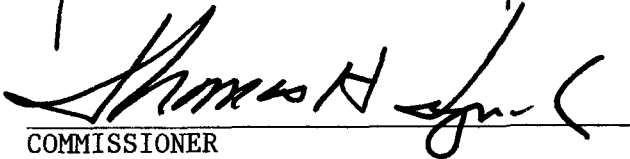
B. That the petition of Louis A. Corbelli and Joanne E. Corbelli is denied and the Notice of Deficiency issued January 27, 1975 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER