

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George & Violet Bura : 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 :
1975.

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon George & Violet Bura, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George & Violet Bura
454 S. Massey St.
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
29th day of January, 1982.

Janice A. Haglund

J. Vredenburg

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

January 29, 1982

George & Violet Bura
454 S. Massey St.
Watertown, NY 13601

Dear Mr. & Mrs. Bura:

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 TAX COMMISSION

DECISION

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 June 15, 1981 at 2:15 P.M. Petitioner George Bura appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

Whether travel expenses are deductible as away from home expense under section 162(a)(2) of the Internal Revenue Code or are they allowed as ordinary and necessary expenses pursuant to section 162(a) of the Internal Revenue Code.

2. On May 12, 1978, the Audit Division issued a Notice of Deficiency to petitioners, asserting additional personal income tax for 1975 of \$351.00, plus

interest. This was done on the grounds that travel expenses incurred on an "indefinite" assignment are not deductible pursuant to section 162(a)(2) of the Internal Revenue Code.

3. Petitioner, George Bura, worked as a contractor with Penn Central Transportation Company. In 1975 the petitioners lived in Watertown, New York. During 1975 petitioner George Bura travelled by automobile forty miles to the Gouverneur, New York railroad yard to work. The petitioner George Bura's work assignment was controlled by a dispatcher at the Massey railroad yard in Watertown, New York. The petitioner George Bura was usually not required to sign in at the Massey railroad yard before proceeding to Gouverneur, New York railroad yard. However, he was required to call the Massey dispatcher upon arriving at work in Gouverneur, New York. The railroad had the right to send him to any location of its choosing and did so from time to time.

4. The travel expense incurred by petitioner George Bura is based on his travel to and from work, by automobile during each working day. At the hearing the Audit Division argued that the claimed expenses were attributable to his cost of commuting which is a personal expense and not deductible.

5. Petitioners' primary argument is that since he was assigned to a railroad yard outside the Watertown, New York area, his costs of getting to work and back home should be deductible. His alternative argument is that since he could have been transferred from one railroad yard to another he was a temporary employee, and that his residence in Watertown was his "tax home". Accordingly he concluded that the 80 mile round trips to Gouverneur, New York were trips away from home in 1975.

CONCLUSIONS OF LAW

A. That transportation expenses need not be "away from home" to be deductible under section 162(a) of the Internal Revenue Code. Thus, location of the taxpayer's tax home does not suffice to distinguish transportation

expenses. Secondly, the concept of "temporary" or indefinite" employment, which bear upon the issue under section 162(a)(2) of the Internal Revenue Code as to whether it is reasonable for a taxpayer to move his residence near to his employment, are of little or no value in distinguishing transportation expenses from commuting expenses (Steinhort v. Commissioner, 335 F 2d 496, 504, fn 24 [C.A. 5, 1964]).

B. That the costs of commuting are nondeductible personal expenses (Treas. Rec. 1.162-2(e)). The nature of petitioner George Bura's job cannot serve to convert commuting expenses into ordinary and necessary business expenses. That the travel between the petitioner George Bura's residence and the points of assignment is a nondeductible commuting expense. Commuting is commuting, regardless of the nature of the work engaged in, the distance traveled, or the mode of transportation used (Turner v. Commissioner, 56 TC 27, 33).

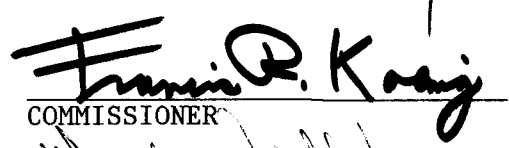
C. That the petition of George Bura and Violet Bura is denied and the Notice of Deficiency issued May 12, 1978 in the amount of \$351.38 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER