

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| ALEXANDER SCELZA and DOROTHY SCELZA | : | DECISION |
| | : | |
| for Redetermination of a Deficiency or | : | |
| for Refund of Personal Income Tax under | : | |
| Article 22 of the Tax Law for the Years | : | |
| 1969 and 1970. | : | |

Petitioners, Alexander Scelza and Dorothy Scelza, residing at 32 Morewood Drive, Smithtown, New York 11787, have 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 and 1970 (File No. 0-55962513). Petitioners' representative, Charles Becker, waived in writing a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Were the petitioners, Alexander Scelza and Dorothy Scelza, entitled to deductions under section 162(a)(2), I.R.C. for the years 1969 and 1970 for amounts expended for meals, lodging and

transportation while Alexander Scelza worked away from Smithtown, New York?

FINDINGS OF FACT

1. Petitioners, Alexander Scelza and Dorothy Scelza, filed timely New York State income tax returns for the years 1969 and 1970.

2. On February 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners disallowing deductions for travel, lodging and meals incurred away from home by petitioner, Alexander Scelza, in his capacity as a construction worker. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$542.21.

3. Petitioners, Alexander Scelza and Dorothy Scelza, maintained a permanent residence at 32 Morewood Drive, Smithtown, New York during the years 1969 and 1970.

4. Petitioner, Alexander Scelza, was employed by the Foster-Lipkins Corporation as an assistant superintendent of construction. From October 1968 to August, 1970 he was employed at the construction of the South Mall project in Albany, New York. The petitioners did not change their residence. Dorothy Scelza and their children remained at home in Smithtown, New York during the years in issue. Mr. Scelza spent the week at the job site in Albany, returning to

Smithtown on weekends. He received \$5,000 in 1969 and \$2,840 in 1970 from the Foster-Lipkin Corporation for expenses incurred for travel, meals and lodging. There was no definite anticipated duration for the Albany work assignment.

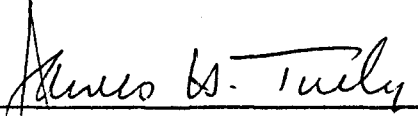
CONCLUSIONS OF LAW

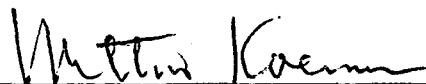
A. That petitioners, Alexander Scelza and Dorothy Scelza, are liable for the additional tax assessed. Petitioner, Alexander Scelza, worked in Albany for 22 months. For purposes of the travel expense deduction, an employment of actual duration of more than one year at a particular location is strongly indicative of a presence beyond a temporary period. The lack of an anticipated duration for the employment period underscores the indefinite nature of the employment. The employment was not temporary and cannot be characterized as "away from home" for the purposes of Section 162(a)(2) I.R.C. Albany, New York, must be considered petitioner, Alexander Scelza's tax home for travel expense purposes.

B. That the petition is denied.

DATED: Albany, New York
April 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER