

STATE OF NEW YORK
STATE TAX COMMISSION

Liigand Mr. Otto
P.I.
ART. 22

1971

In the Matter of the Petition
:
of
OTTO LIIGAND
:
:
For a Redetermination of a Deficiency or
a Refund of Personal Income
:
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1965
:

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Rae Zimmerman , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 7th day of July , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Otto Liigand (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Otto Liigand
249-56 Beechknoll Road
Little Neck, New York 11363
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

7th day of July , 1971.

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
OTTO LIIGAND	:	AFFIDAVIT OF MAILING
	:	OF NOTICE OF DECISION
For a Redetermination of a Deficiency or	:	BY (CERTIFIED) MAIL
a Refund of Personal Income	:	
Taxes under Article(s) 22	:	
Tax Law for the (Year(s) 1965	:	

State of New York
County of Albany

Rae Zimmerman , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 7th day of July , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon John C.

Levy, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John C. Levy, Esq.
c/o Shapiro, Schlissel, Beilly & Fox, Esqs.
225 Broadway
New York, New York
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

7th day of July , 1971.

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

OTTO LIIGAND : DECISION

for a Redetermination of a Deficiency
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for
the Year 1965. :

Otto Liigand filed a petition pursuant to section 689 of the Tax Law for the redetermination of a deficiency under date of January 27, 1969, and for refund of personal income tax under Article 22 of the Tax Law for the year 1965. A hearing was duly held on June 25, 1970, before Nigel G. Wright, Hearing Officer. Petitioner was represented by John C. Levy, Esq., of Shapiro, Schlissel, Beilly and Fox and the Income Tax Bureau was represented by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel). The record has been duly examined and considered.

ISSUE

The issue in this case is whether expenses for an automobile, meals and lodging incurred when petitioner was traveling weekly from his house to a job site were incurred "away from home" within the meaning of section 162(a)(2) of the Internal Revenue Code so as to be deductible against income.

FINDINGS OF FACT

1. Taxpayer resided at Little Neck, Long Island, New York, with his wife and children. He is an electrical engineer. His wife was employed. He filed a separate return.

2. From January 1, to April 2, taxpayer was employed by All States Design and Development Co., Inc. whose principle place

of business was in Trenton, New Jersey. His assignment was at the International Business Machine plant at Poughkeepsie, New York.

3. From April 26 through December, taxpayer was employed by L.J. Gonzer Associates whose principle place of business was Newark, New Jersey. His assignment was at the International Business Machines plant at Binghamton, New York.

4. The taxpayer filed Federal and New York returns showing expenses for travel, meals and lodging computed as follows: For the thirteen weeks at Poughkeepsie, an expenditure of \$70.00 a week and reimbursement of \$56.00 a week for a net outlay of \$14.00 a week or \$182.00 in total; for the 36 weeks at Binghamton, an expenditure of \$70.00 a week with no reimbursement for a total of \$2,520.00 and a total for the year of \$2,702.00.

5. The taxpayer filed an amended return on September 30, 1968, increasing his travel, lodging and meal expenses by \$2,926.88 from \$2,702.00 to \$5,628.88. This is by reason of claiming automobile expenses on 25,000 miles for the year.

6. The taxpayer never worked at the Newark office of Gonzer. He worked at the Newark office of All States only for a short time in previous years. The taxpayer expected when he took each job that it would last from six to nine months. The job in Poughkeepsie lasted one year and six months.

7. The taxpayer needed his car to travel between his night lodging and the IBM plant at which he was working. He estimated the mileage to be 5,000 miles. The distance between Binghamton and Newark is 230 miles one way. The distance between Poughkeepsie and Newark is 80 miles one way.

8. The Notice of Deficiency dated January 27, 1969, finds a tax due of \$302.81 with interest of \$50.56 for a total of \$353.37. The Income Tax Bureau has agreed to a recomputation based on matters

not in dispute and finds the corrected deficiency to be \$139.18 plus interest.

CONCLUSIONS OF LAW

A. The petitioner has failed to sustain the burden of proof that the job sites to which he was assigned were not his "tax home" and thus is not entitled to deduct the expenses incurred in traveling to and from the job site.

DECISION

The petition is granted. The refund is denied and the deficiency is recomputed to be \$139.18 tax due plus interest to January 27, 1969, as found in paragraph 8, plus such further interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York

July 7, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER