STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RALPH C. and JEAN D. McCALL

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) 1967.

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

State of New York
County of Albany

MARTHA FUNARO, 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 3rd day of May, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon RALPH C. and JEAN D. McCALL (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. & Mrs. Ralph C. McCall
4403 Bridle Path
Marshall, Texas 75670

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
3rd day of May, 1974

Martha Funaro

Joyce A. MacPatter

AD-1.30 (1/74)

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

MARTHA FUNARO, 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 3rd day of May, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon DAVID A. BOTWINIK, ESQ. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David A. Botwinik, Esq.
Pavia & Harcourt
63 Wall Street
New York, New York 10005

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
3rd day of May, 1974

Martha Funaro

Joyce A. Van Patten

AD-1.30 (1/74)

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
Mario A. Procaccino
XXXXXXXXXXXXXX, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 3, 1974

Mr. & Mrs. Ralph C. McCall
4403 Bridle Path
Marshall, Texas 75670

Dear Mr. & Mrs. McCall:

Please take notice of the DECISION of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section 690 of the Tax Law any proceeding in court to review an adverse decision must be commenced within 4 months after the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed in accordance with this decision or concerning any other matter relating hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

AD-1.12 (7/70)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RALPH C. and JEAN D. McCALL	:	DECISION
for a Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1967.	:	

Ralph C. and Jean D. McCall filed a petition under section 689 of the Tax Law for the redetermination of a deficiency issued under date of February 24, 1969, in personal income tax for the year 1967 in the amount of $289.88 plus interest of $5.35 for a total of $295.23 and less an overpayment on the return of $185.98 for a net amount due of $109.25.

In lieu of a hearing, petitioners have submitted their case to the State Tax Commission on the file of the Income Tax Bureau. Petitioners are represented by James J. McMahon, Jr., Esq., of Pavia & Harcourt, New York City. Said file has been duly examined and considered.

ISSUE

The issue in this case is whether New York adjusted gross income should include the reimbursement received by petitioner, Ralph C. McCall, for the expenses of moving from Florida to New Jersey in connection with a job transfer to the New York City office of petitioner, Ralph C. McCall's employer.

FINDINGS OF FACT

1. Petitioners, Mr. and Mrs. McCall, at all times have been nonresidents of New York. Prior to 1967, they were residents of Tampa, Florida, where Mr. McCall was employed by the Aluminum Company of America ("Alcoa") as a sales engineer. During 1967, petitioners

moved to Middletown, New Jersey, in connection with Mr. McCall's reassignment to the New York City offices of Alcoa.

2. Petitioner was reimbursed by Alcoa for certain of his expenses incurred in connection with his transfer. These expenses included transportation while house hunting of $991.01; meals and lodging while house hunting of $905.77; expenses of sale of the old house in Florida of $1,900.01; expenses of the purchase of a new house in New Jersey of $625.02; and an adjustment for increased Federal tax liability of $1,359.00. Almost all of their expenses had been incurred in 1966, although reimbursement was received entirely in 1967.

3. Petitioners filed a nonresident New York tax return for 1967. They reported $18,290.81 as salary from Alcoa as shown on the Alcoa's New York wage withholding statement, but reduced that by the amount of $5,780.81 representing the reimbursement for moving expenses which was included in the wages as reported.

4. The deficiency is computed on the basis of including in petitioner's New York income the entire amount of the reimbursed moving expenses.

CONCLUSIONS OF LAW

The petitioners, who were at all times nonresidents of New York, are taxable on the net amount of items of income which enter into their Federal adjusted gross income which are "derived from or connected with New York sources..." (Tax Law section 632(a)(1)(B)). These include items of income attributable to an occupation carried on in New York (Tax Law section 632(b)(1)(B)).

Such items of income attributable to an occupation carried on in New York should reasonably include the reimbursement, at issue in this case, for moving expenses incurred in connection with a transfer to a job location in New York. This is not only a reasonable

position, it is also consistent with the treatment of moving expenses for Federal income tax purposes.

The Internal Revenue Code and the Internal Revenue Service have characterized the reimbursement of moving expenses as "attributable to the performance of services if made because of the employer-employee relation" (U.S. Treas. Reg. 1.82-1(a)(5) applicable to calendar years 1970 and following). They have similarly characterized moving expenses themselves as incurred "in connection with" the commencement of work at a new job location (I.R.C. 217(a)). And such expenses (with limitations) are deductible from Federal gross income to reach adjusted gross income by reason of I.R.C. section 62(8). This is true of both the direct and indirect expenses of a move.

The direct expenses are deductible under I.R.C. section 217 (applicable to calendar years 1964 and following) and the petitioner in this case so deducted them, in effect, by not reporting either such expenses or the employer's reimbursement of such expenses. This would seem to be an admission by petitioner that such expenses are in fact related to the new employment (see Hartung 55 U.S. Tax Court 1, dissenting opinion of Drenen, J. at page 4). Such direct expenses when incurred in a move to a foreign nation have been held "allocable or chargeable against" the earned income from foreign sources excluded from income under I.R.C. section 911 (Hartung v. Comm'r 484 F2d 953 reversing 55 U.S. Tax Court 1 and adopting the opinion of Sterrett, J., 55 U.S. Tax Court 1 at page 5).

The indirect expenses of a move including expenses incident to the sale and purchase of homes, are deductible, with limitations, under the same I.R.C. section 217 for calendar years 1970 and following. The fact that such expenses are not deductible during

the years in issue in this case does not, however, imply that they are unrelated to income (see Hartung, 55 U.S. Tax Court 1, opinion of Sterrett J., footnote 1). To the extent that such indirect expenses are deductible on the Federal return, as they are to some extent beginning in 1970, they would to that extent reduce Federal adjusted gross income and also the New York adjusted gross income of a taxpayer being transferred to a job location in New York State with the result that the increased income from reimbursement would be reduced by the amount of such expenses.

DECISION

The deficiency is found to be correct and is due together with such interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
May 3, 1974

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER