

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH J. CLARK AND GAY CLARK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article ~~(s)~~ 22 of the  
Tax Law for the Year(s) ~~xxxxxx~~ 1968,  
1969, 1970 and 1971.

State of New York  
County of Albany

Carmen Mottolese, 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 6th day of August, 1976, she served the within  
Notice of Decision by (certified) mail upon Kenneth J. Clark and  
Gay Clark ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Kenneth J. Clark and Gay Clark  
403 Chestnut Avenue  
East Meadow, New York 11554

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 ~~(representative of the)~~  
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

6th day of August, 1976.

Carmen Mottolese

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH J. CLARK AND GAY CLARK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) ~~xxxxxxxxxx~~ 1968, :  
1969, 1970 and 1971.

State of New York  
County of Albany

Carmen Mottolese , 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 6th day of August , 19 76, she served the within  
Notice of Decision by (certified) mail upon Charles Becker  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Charles Becker  
P.O. Box 1185  
Fort Lee, NJ 07024

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 (representative  
of the) 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

6th day of August , 1976

Carmen Mottolese

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 6, 1976

TELEPHONE: (518) ~~457-3850~~

┌ Kenneth J. Clark and Gay Clark  
403 Chestnut Avenue  
East Meadow, New York 11554

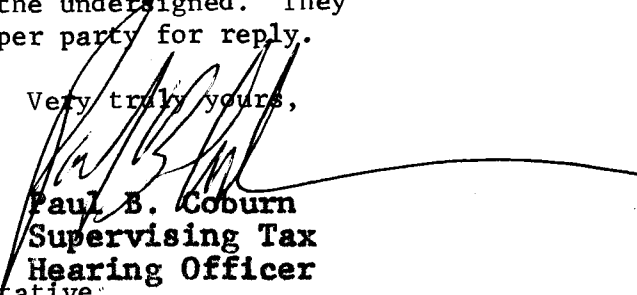
Dear Mr. & Mrs. Clark:

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

Please take further notice that pursuant to  
Section(x) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

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

Very truly yours,

  
Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions :

of :

KENNETH J. CLARK and GAY CLARK : DECISION

for Redetermination of a Deficiency  
or for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for  
the Years 1968, 1969, 1970 and 1971. :

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Petitioners, Kenneth J. Clark and Gay Clark, residing at 403 Chestnut Avenue, East Meadow, New York 11554, have filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968, 1969 and 1970 (File No. 0-58455639), and 1971 (File No. 1-84121889). Petitioners and their 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.

ISSUE

Were the petitioners, Kenneth J. Clark and Gay Clark, entitled to deductions under Section 162(a) (2), I.R.C. for the years 1968, 1969, 1970 and 1971 for amounts expended for meals, lodging and transportation while Kenneth J. Clark worked away from East Meadow, New York?

FINDINGS OF FACT

1. Petitioners, Kenneth J. Clark and Gay Clark, timely filed New York State income tax returns for the years in issue.
2. On April 10, 1972, the Income Tax Bureau issued statements of audit changes for the years 1968, 1969 and 1970 against the petitioners disallowing deductions for travel, lodging and meals incurred away from home by petitioner, Kenneth J. Clark, in his capacity as a construction worker. In accordance with the aforesaid statements of audit changes, it issued notices of deficiency totaling \$2,633.68. Subsequently, on April 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes for the year 1971 disallowing the same deductions as for the prior years. In accordance with said Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$712.36.
3. Petitioners, Kenneth J. Clark and Gay Clark, maintained a permanent residence at 403 Chestnut Avenue, East Meadow, New York, during the years 1968, 1969, 1970 and 1971.
4. Petitioner, Kenneth J. Clark, was employed by the Foster-Lipkin Corporation as a project administrator. In 1968 and 1969, he was employed in Rochester, New York, administering to projects at Monroe

Community College and R. I. T. In January, 1970, he left Rochester and until May, 1970, was employed at the home office of Foster-Lipkin in New York. From May, 1970 until June 1971, he was employed at the South Mall project in Albany, New York

5. The petitioners did not change their residence. Gay Clark and their children remained at home in East Meadow, New York during the years in issue. Mr. Clark spent the week at the job sites and returned to East Meadow on week-ends. He received \$5,000 a year for the years 1968, 1969 and 1970, and \$7,800 in the year 1971 from the Foster-Lipkin Corporation for expenses incurred for travel, meals and lodging. There was no definite time period for the work assignments.

#### CONCLUSIONS OF LAW

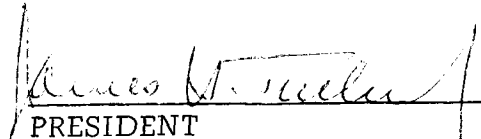
A. That petitioners, Kenneth J. Clark and Gay Clark, are liable for the additional tax assessed. Petitioner, Kenneth J. Clark, worked in Rochester for two years and in Albany for 13 months. For purpose of the travel expense deduction, an employment of actual duration of more than one year at a particular 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 purpose of section 162(a)(2) I.R.C. Rochester, New York and Albany, New York must be considered petitioner, Kenneth J. Clark's tax home for travel expense purposes.

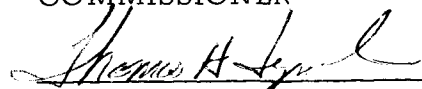
B. That the petitions are denied.

DATED: Albany, New York  
August 6, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER