

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS & DOROTHY M. POWERS

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~~ :
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 30th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Thomas & Dorothy M.
Powers ~~XXXXXXXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Thomas Powers
2-A Witte Road
Albany, New York 12203

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 ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this

30th day of September, 1976.

Carmen M. 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

September 30, 1976

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

Mr. & Mrs. Thomas Powers
2-A Witte Road
Albany, New York 12203

Dear Mr. & Mrs. Powers:

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,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE TAX COMMISSION

In the Matter of the Petition :
of :
THOMAS & DOROTHY M. POWERS :
for a Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1969, 1970 and 1971. :

Petitioners, Thomas and Dorothy M. Powers, 2-A Witte Road, Albany, New York 12203, filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1969, 1970 and 1971. (File Nos. 9-35906805 and 1-74684762). A small claims hearing was held before Harry Huebsch, Hearing Officer, June 15, 1976 at 10:45 A.M., at the offices of the State Tax Commission, Room 107, Building #9, State Campus, Albany, New York. Petitioner, Thomas Powers, appeared pro se and for his wife, Dorothy M. Powers. The Income Tax Bureau appeared by Peter J. Crotty, Esq., (Solomon Sies, Esq., of counsel).

Was Albany considered to be the petitioner's tax home for income tax purposes for the years 1969, 1970 and 1971, and, if so, did supplemental income received in such years for living expenses constitute additional taxable income for the years in question?

FINDINGS OF FACT

1. Petitioners, Thomas and Dorothy M. Powers, timely filed 1969, 1970 and 1971 joint resident New York State income tax returns. Upon audit of South Mall contractors, the Income Tax Bureau discovered that supplemental living expense reimbursement had been paid to Thomas Powers, who worked at the South Mall construction site. The Income Tax Bureau held these unreported payments taxable and issued notices of deficiency in the amount of \$281.56 for 1969 and \$565.40 for 1970 and 1971.

2. In 1965 petitioner, Thomas Powers, moved with his family and all belongings from the New York City area to the upstate Albany area to work at the South Mall. In addition to his wages, he received a supplemental check each week to defray living and automobile expenses. No voucher or explanation of any kind accompanied the supplemental payment. No withholding of any kind was deducted from the payment. This supplemental compensation did not appear on his withholding slip. No services were performed for this income.

3. When petitioners, Thomas and Dorothy M. Powers, first came to the Albany area, there was no definite anticipated duration for the Albany work assignment. After the South Mall work was completed, Thomas Powers and his family remained in the Albany area and still live here as of this date.

4. Petitioners, Thomas and Dorothy M. Powers, could not substantiate any amounts incurred for automobile expense.

CONCLUSIONS OF LAW

A. That petitioners, Thomas and Dorothy M. Powers, failed to substantiate any work connected expenses.

B. That the petitioners maintained their residence in the upstate Albany area from 1965 to date.

C. That the petitioner's tax home for the years in question was the upstate Albany area.

D. That the supplemental income received in such years constituted additional taxable income in such years.

E. That the petition is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York
September 30, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER