

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NORMAN P. WINARSKY

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

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) 1968, 1969,
1970 and 1971.

State of New York
County of Albany

MARYLOU SAMUELS

, 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 20th day of May, 1976, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Norman P. Winarsky

(~~representative of~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Norman P. Winarsky
4 Knoll Lane
Jericho, New York 11753

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

20th day of May, 1976.

Janet Mack

Marylou Samuels

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NORMAN P. WINARSKY

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

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) 1968, 1969
1970 and 1971

State of New York
County of Albany

MARYLOU SAMUELS, 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 20th day of May, 1976, she served the within
Notice of Decision ~~for Determination~~ 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, New Jersey 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 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

20th day of May, 1976.

Jinett Mack

Marylou Samuels



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

457-3850

TELEPHONE: (518)

May 20, 1976

Mr. Norman P. Winarsky
4 Knoll Lane
Jericho, New York 11753

Dear Mr. Winarsky:

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

Please take further notice that pursuant to
Section ~~690~~ 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

In the Matter of the Petitions :
of :
NORMAN P. WINARSKY :
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. :

DECISION

Petitioner, Norman P. Winarsky, 4 Knoll Lane, Jericho, New York 11753, has 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. 58769237) and 1971 (File No. 1-78595801). The petitioner waived in writing a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file.

ISSUE

Was the petitioner 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 he worked away from Jericho, New York?

FINDINGS OF FACT

1. Petitioner, Norman P. Winarsky, timely filed New York State income tax returns for the years 1968, 1969, 1970 and 1971.

2. On April 10, 1972, the Income Tax Bureau issued a Statement of Audit Changes for the years 1968, 1969 and 1970 against the petitioner disallowing deductions for travel, lodging and meals incurred away from home by petitioner 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 \$966.77. Subsequently, on February 26, 1973, a Statement of Audit Changes for the year 1971 was issued by the Income Tax Bureau against petitioner, Norman P. Winarsky, disallowing similar deductions as in the prior years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$634.24.

3. On February 26, 1973, a Notice of Claim was issued by the Income Tax Bureau revising the Statement of Audit Changes for the years 1969 and 1970 and imposing additional personal income tax for those years in the sum of \$198.97, plus interest.

4. Petitioner, Norman P. Winarsky, maintained a permanent residence at 4 Knoll Lane, Jericho, New York during the years in issue.

5. Petitioner, Norman P. Winarsky, was employed by the Foster-Lipkins Corporation as a timekeeper. From October, 1968 to March, 1972 he was employed at the construction of the South Mall project in Albany, New York. Mrs. Winarsky and their children remained at home in Jericho, New York. He spent the week at the job site in Albany, returning to Jericho on weekends.

6. Petitioner, Norman P. Winarsky, received \$5,000.00 in 1968, \$6,100.00 in 1969, \$6,499.08 in 1970 and \$7,800.00 in 1971 from the Foster-Lipkins Corporation for expenses incurred for travels, meals and lodging. There was no definite, anticipated duration for the Albany work assignment.

CONCLUSIONS OF LAW

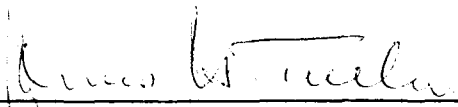
A. That petitioner, Norman P. Winarsky, is liable for the additional tax assessed. He worked in Albany for 41 months during the years in issue. For purposes of the travel expense deduction, an employment of actual duration of more than one year at a particular location is strongly indicative of a presence 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) of the

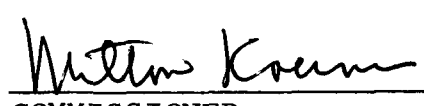
I.R.C. Albany, New York must be considered his tax home for travel expense purposes.

B. That the petitions of Norman P. Winarsky are denied.

DATED: Albany, New York
May 20, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER