

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition .

of

JOSEPH and MARIE A. CIACCO

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) ~~on Period(s)~~ :
1969 and 1970.

State of New York
County of Albany

John Huhn , 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 25th day of August , 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Joseph & Marie A. Ciacco

(~~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. Joseph Ciacco
1957 Bronxdale Avenue
Bronx, New York 10462

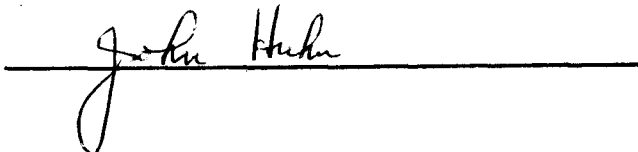
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25th day of August , 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 25, 1978

Mr. & Mrs. Joseph Ciacco
1957 Bronxdale Avenue
Bronx, New York 10462

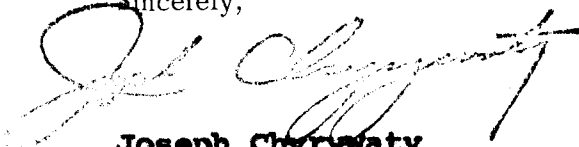
Dear Mr. & Mrs. Ciacco:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(x) **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Joseph Chyrywat
Hearing Examiner

cc: ~~Excluded Representation~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

JOSEPH and MARIE A. CIACCO :

DECISION

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

Petitioners, Joseph and Marie A. Ciacco, 1957 Bronxdale Avenue, Bronx, New York 10462, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969 and 1970 (File No. 00673).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 20, 1977 at 10:00 A.M. Petitioner Joseph Ciacco appeared pro se and for his wife, petitioner Marie A. Ciacco. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether amounts received for living expense allowances for 1969 and 1970 were includable in petitioners' gross income under section 61 of the Internal Revenue code.

II. Whether amounts expended for meals and lodging for 1969 and 1970 were allowable deductions under section 162(a)(2) of the Internal Revenue Code.

FINDINGS OF FACT

1. Petitioners, Joseph and Marie A. Ciacco, filed IT-201 New York State joint income tax returns for 1969 and 1970.

2. On April 13, 1973, the Income Tax Bureau issued a Statement of Audit Changes (IT-38) and a Notice of Deficiency (IT-90) against the petitioners, Joseph and Marie A. Ciacco, for additional income tax due in the amounts of \$306.44 and \$247.17, for 1969 and 1970, respectively, plus minimal statutory interest.

The explanation was that:

"The miscellaneous income and other compensation received for expenses constitutes taxable income, and expenses in Albany are nondeductible as Albany is considered your tax home while employed there."

"Therefore, the adjustments claimed on your 1969 and 1970 returns are disallowed."

"Information available indicates that you received miscellaneous income in 1969 of \$5,006.00 and \$2,446.00 in 1970."

3. Petitioners, Joseph and Marie A. Ciacco, maintained a permanent residence at 1957 Bronxdale Avenue, Bronx, New York, during 1969 and 1970.

4. Petitioner Joseph Ciacco was employed as a construction labor foreman at the South Mall construction site in Albany, New York, during 1969 and 1970. In 1969 he was employed by Foster Lipkins Corporation and Psaty and Fuhrman, Inc. During this period, he received compensation in the sum of \$5,006.00 for meal and lodging expenses incurred while at the Albany site.

5. In 1970 petitioner Joseph Ciacco was employed at the South Mall construction site by Psaty and Fuhrman, Inc., P.J. Carlin Construction Co., Atlas Tile and Marble Co. and E.V. Testa Construction Corporation. During this period the petitioner received compensation in the sum of \$2,446.00 for meal and lodging expenses incurred while at the Albany site.

6. During the period in issue, petitioner Joseph Ciacco spent the week at the Albany job site and returned to his residence in the Bronx on the weekend. Petitioner Marie A. Ciacco and the petitioners' children remained at the Bronx residence during 1969 and 1970.

7. The duration of employment in the Albany area was for an indefinite period. The petitioner could not substantiate time periods involved for his employment at the Albany site, nor did he substantiate his travel expense deductions.

CONCLUSIONS OF LAW

A. That living expense allowances received by the petitioner Joseph Ciacco were includable in his gross income according to the meaning and intent of section 61 of the Internal Revenue Code.

B. That the employment of Joseph Ciacco in the Albany area during 1969 and 1970 was for an indeterminate duration rather than merely temporary and cannot be characterized as "away from home" for the purpose of section 162(a)(2) of the Internal Revenue Code.

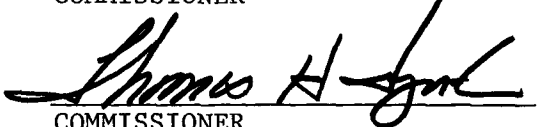
C. That the petition of Joseph and Marie A. Ciacco is denied and the Notice of Deficiency issued April 13, 1973 is sustained.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER