

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWIN P. PARLIMAN

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

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 16th day of March, 1978, she served the within  
Notice of Decision by (certified) mail upon Edwin P. Parlman

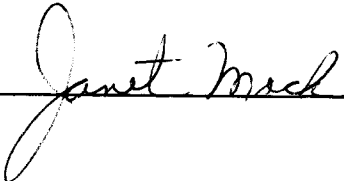
~~XXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Edwin P. Parlman  
23 Hurd Avenue  
Garnerville, New York 10923

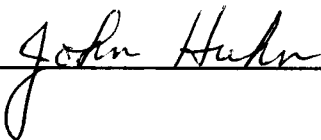
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXX~~  
~~XXXXXX~~ 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

16th day of March, 1978.

  
\_\_\_\_\_

  
\_\_\_\_\_

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

EDWIN P. PARLIMAN :

DECISION

for 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. :  
:

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Petitioner, Edwin P. Parlman, 23 Hurd Avenue, Garnerville, New York 10923, 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, 1970 and 1971 (File No. 00662).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 29, 1977 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

#### ISSUE

Whether petitioner could exclude amounts received from his employer for living expenses while working away from Garnerville, New York, from his income.

#### FINDINGS OF FACT

1. Petitioner filed timely New York State personal income tax returns for the years 1969, 1970 and 1971, in which he failed to include living expense allowances received from his employer.

2. The Income Tax Bureau determined the amounts of the living expense allowances received by petitioner for the years 1969, 1970 and 1971 from information available. It then issued a Statement of Audit Changes in which the amounts received for living expenses by petitioner were included in his taxable income. Accordingly, the Bureau issued a Notice of Deficiency on April 13, 1973 for the years 1969 and 1970 in the sum of \$751.44. Another Notice of Deficiency was issued on April 13, 1973 for the year 1971 in the sum of \$496.40.

3. Petitioner maintained a permanent place of abode in Garnerville, New York, during the years at issue.

4. During 1967 petitioner accepted employment at the South Mall construction project in Albany, New York. The employment period was expected to last until December 31, 1969; however, due to delays, it continued until 1972. Petitioner was provided with a cash living allowance while employed in Albany. He received \$3,750.00 in 1969, \$4,775.00 in 1970 and \$5,250.00 in 1971.

5. During the years 1969, 1970 and 1971, petitioner spent Monday through Friday at the job site in Albany and returned home to Garnerville on weekends. There was no definite duration for the Albany work assignment.

#### CONCLUSIONS OF LAW

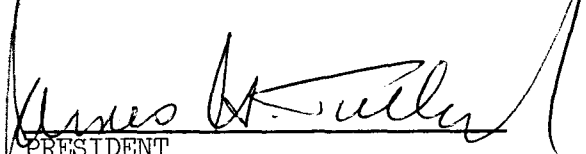
A. That petitioner's employment in Albany, New York, during the years 1969, 1970 and 1971 was for an indeterminate duration rather than for a temporary duration. Therefore, petitioner was not considered to have been "away from home" during said years; thus, the amounts he received from his employer for living expenses could not be excluded from taxable income within the meaning and intent of section 162(a)(2) of the Internal Revenue Code.

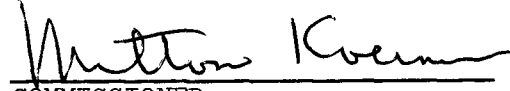
B. That the petition of Edwin P. Parlman is denied and the notices of deficiency issued April 13, 1973 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

March 16, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



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

March 16, 1978

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

Edwin P. Parlman  
23 Hurd Avenue  
Garnerville, New York 10923

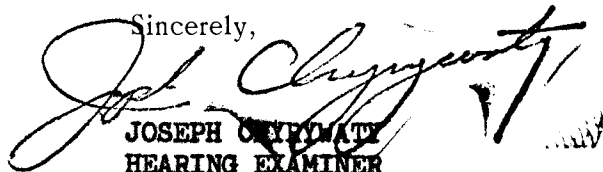
Dear Mr. Parlman:

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 ~~(s)~~ **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 CIPRIANO  
HEARING EXAMINER

XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
cc. Petitioner's Representative

Taxing Bureau's Representative