

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gary L. & Marie R. Johnson :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Years 1969-1971. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of August, 1979, he served the within Notice of Decision by certified mail upon Charles Becker the 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
8th day of August, 1979.

Victoria King

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of August, 1979, he served the within Notice of Decision by certified mail upon Gary L. & Marie R. Johnson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gary L. & Marie R. Johnson
95 Beach Rd.
Massapequa, NY 11758

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
8th day of August, 1979.

Notary Public

Jay Vredenburg

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 8, 1979

Gary L. & Marie R. Johnson
95 Beach Rd.
Massapequa, NY 11758

Dear Mr. & Mrs. Johnson:

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,



cc: Petitioner's Representative
Charles Becker
P.O. Box 1185
Fort Lee, NJ 07024
Taxing Bureau's Representative

FINDINGS OF FACT

1. Petitioners, Gary L. Johnson and Marie R. Johnson, timely filed New York State personal income tax returns for 1969, 1970 and 1971, on which they failed to report supplemental living expense allowances received by petitioner Gary L. Johnson from his employer.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioners. This was done on the grounds that unreported reimbursements for travel and living expenses received by petitioner Gary L. Johnson from his employer constituted taxable income, and that the expenses incurred by him while working in Albany, New York, were nondeductible, since Albany was considered his tax home for personal income tax purposes. Accordingly, the Income Tax Bureau issued a Notice of Deficiency to petitioners on February 26, 1973 for 1969, 1970 and 1971 in the amount of \$974.84 in personal income tax, plus \$130.38 in interest, for a total of \$1,105.22.

3. Petitioners maintained a permanent place of abode in Hicksville, New York. During the years at issue, petitioner Gary L. Johnson worked in Albany during the week and returned to his Hicksville home on the weekend. There was no definite duration for the Albany work assignment. It was expected to last for two years; however, due to delays, the duration of the work assignment was extended.

4. While working in Albany, petitioner Gary L. Johnson was provided with a supplemental living expense allowance in equal weekly amounts by his employer. He received \$6,385.00 during 1969, \$3,550.00 during 1970 and \$1,846.00 in 1971. These amounts were not included in his wage and tax statements. He did not claim deductions for the expenses he incurred on his New York State personal income tax returns. He contended that the living expense allowance was used for travel, meals and lodging.

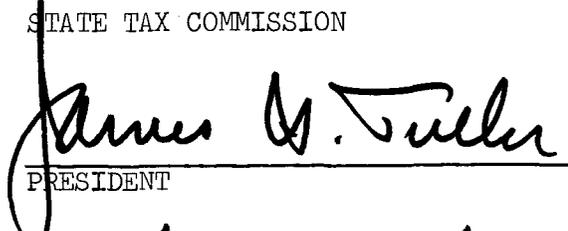
CONCLUSIONS OF LAW

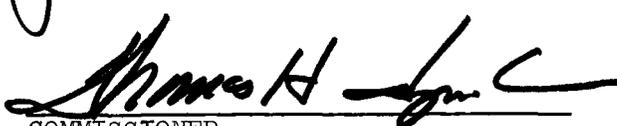
A. That petitioner Gary L. Johnson's employment in Albany, New York, during 1969, 1970 and 1971 was for an indeterminate duration, rather than temporary in nature and cannot be characterized as "away from home," in accordance with the meaning and intent of section 162(a)(2) of the Internal Revenue Code; therefore, he could not properly exclude from taxable income the amounts which he received from his employer as living expenses, nor could he deduct the expenses incurred for travel, meals and lodging since these were personal expenses and, therefore, nondeductible.

B. That the petition of Gary L. Johnson and Marie R. Johnson is denied and the Notice of Deficiency issued February 26, 1973 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
August 8, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER