

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Donald C. & Catherine M. Thew :
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 Year 1973. :

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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Donald C. & Catherine M. Thew, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald C. & Catherine M. Thew
RD 1
Peru, NY 12972

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
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 26, 1979

Donald C. & Catherine M. Thew
RD 1
Peru, NY 12972

Dear Mr. & Mrs. Thew:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
DONALD C. and CATHERINE M. THEW : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Year 1973. :

Petitioners, Donald C. and Catherine M. Thew, RD# 1, Peru, New York 12972, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 12434).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on December 15, 1978 at 1:15 P.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Barry M. Bresler, Esq. and Kathy L. Sanderson, Esq., of counsel).

ISSUE

I. Whether petitioners were entitled to a deduction for travel and away-from-home expenses incurred by Donald Thew in connection with his employment.

II. Whether petitioners were entitled to a deduction for travel, meals and lodging expenses incurred in connection with the maintenance of rental properties, or whether his "tax home" is determined to be at his place of employment.

FINDINGS OF FACT

1. Petitioners, Donald C. and Catherine M. Thew, timely filed a New York State Income Tax Resident Return for 1973.

2. On July 3, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, on which it stated that petitioner Donald Thew's tax home was his place of business, a construction site in Goldens Bridge, New York, and not his residence in Peru, New York. Therefore, the expenses incurred while in Goldens Bridge were nondeductible. On November 24, 1975, the Income Tax Bureau issued a Notice of Deficiency asserting additional personal income tax of \$562.21, plus interest of \$67.93, for a total due of \$630.14.

3. Petitioners maintained a permanent residence at RD# 1, Peru, New York, during 1973. Petitioner Donald Thew worked at the construction site at Goldens Bridge from April through November 1973 and had secured lodging near the site. He did not know how long he was going to work on said job. He traveled to Plattsburg, New York every weekend to maintain three apartment houses which he owned.

4. The Income Tax Bureau's position was based on the fact that petitioner Donald Thew's employment was indefinite in nature and his tax home was at the construction site in Goldens Bridge, New York. The Bureau did not dispute the amount of the deduction, only whether the amount was deductible.

5. Petitioner Donald Thew testified that he incurred travel expenses of \$2,654.00 and meals and lodging expenses of \$14.00 per day while traveling to and from his rental property in Plattsburgh, New York. Petitioner's uncontroverted testimony was that these expenses were incurred in connection with the repair and maintenance of said property.

CONCLUSIONS OF LAW

A. That the Commissioner of Internal Revenue Service has ruled that the word "home" means the business location, post or station of the taxpayer (G.C.M. 23672, 1943 CB 66). That a taxpayer who is employed for an indefinite period at a particular business location is "at home" for tax purposes [Special Ruling May 4, 1956 (1956) 5 Stand. Fed. Tax Rep. (ech)¶6428].

B. That the travel expenses claimed by petitioner Donald Thew in connection with his assignment in Golden Bridge during 1973 are not considered "away from home" expenses for purposes of section 162(a)(2) of the Internal Revenue Code.

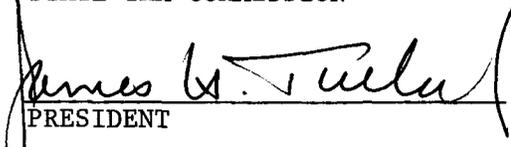
C. That since his tax home is at his place of employment, the travel expenses for \$2,654.00 and meals and lodging expenses for \$980.00, claimed by petitioner Donald C. Thew in connection with the maintenance of his apartment houses in Plattsburgh, New York from April through November 1973 are considered ordinary and necessary expenses incurred for the management, conservation or maintenance of rental property held for the production of income in accordance with section 62(5) of the Internal Revenue Code.

D. That the petition of Donald C. and Catherine M. Thew is granted to the extent indicated in Conclusion of Law "C". The Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued November 24, 1975. Except as so granted, the petition is in all other respects denied.

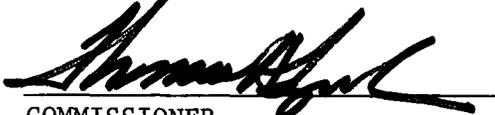
DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER