

STATE OF NEW YORK

STATE **TAX** COMMISSION

In the Matter of the Petition

of

EDWARD HARDY & MARY HARDY

DECISION

for Redetermination of a Deficiency or for
Refund of New York State Personal Income Tax
under Article 22 of the Tax Law and New York :
City Nonresident Earnings Tax under Chapter
46, Title U of the Administrative Code of the :
City of New York for the Years 1979 and 1980.

Petitioners, Edward Hardy and Mary Hardy, P.O. Box 839, Newark, New Jersey 07101, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the years 1979 and 1980 (File No. 51022).

A hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 14, 1986 at 10:45 A.M., with all briefs to be submitted by August 12, 1986. Petitioner Edward Hardy appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioner Edward Hardy is properly entitled to allocate a portion of his salary income to sources without the State and City of New York.

II. Whether petitioner Edward Hardy is properly entitled to claim a business loss and a rental loss for each of the years 1979 and 1980.

FINDINGS OF FACT

1. Edward Hardy and Mary Hardy filed joint New York State income tax nonresident returns for the years 1979 and 1980. On each return Edward Hardy (hereinafter "petitioner") allocated his salary income to sources within and without the State of New York as follows:

<u>1979</u>	
(Days worked in New York State)	<u>80</u>
(Total days worked in year)	228
x \$33,524.00 (salary) = \$11,762.00	
(Amount allocated to New York State)	
<u>1980</u>	
(Days worked in New York State)	<u>80</u>
(Total days worked in year)	226
x \$37,188.00 (salary) = \$13,164.00	
(Amount allocated to New York State)	

2. On each of the aforesated returns petitioner allocated 35% of his reported business loss and rental loss to New York State.

3. For each of said years petitioner also filed a New York City Nonresident Earnings Tax Return whereon he allocated his salary and claimed losses to New York City on the same basis as that used for New York State. On such returns petitioner reported that his business losses were derived from "Hardo Manufacturers," a "metal works" business located at 247 N.J. Railroad Avenue, Newark, New Jersey.

4. On November 15, 1982, the Audit Division issued a Statement of Audit Changes to petitioner and his wife wherein petitioner's claimed allocations were disallowed. Additionally, penalties were asserted for the late filing of their 1979 return (which was dated April 15, 1981 and received by the Audit Division on April 20, 1981) and the late payment of the taxes due thereon. Accordingly, a Notice of Deficiency was issued against petitioner and his wife for the years 1979 and 1980 on June 17, 1982.

State personal income tax of \$4,008.36, additional New York City nonresident earnings tax of \$318.21, penalty of \$720.01 and interest of \$1,355.50, for a total due of \$6,402.08.

5. As the result of a pre-hearing conference the tax deficiency was reduced from \$4,326.57 to \$3,706.19. Such reduction was based on the allowance of 32 days worked without New York during 1979 and 21 days worked without New York during 1980. Said allowances were based on documentation submitted by petitioner.

6. During the years at issue petitioner was employed by the U.S. Department of The Interior, Office of Youth Programs. He held the position of Regional Director. His region was comprised of New York, New Jersey and Delaware. His duties consisted, ~~inter alia~~, of visiting the camps within his jurisdiction.

7. Petitioner submitted several travel vouchers to evidence a portion of his claimed days spent without New York. However, he was allowed all such substantiated days at the pre-hearing conference.

8. The balance of days claimed as having been worked without New York were unsubstantiated. Petitioner submitted a listing of such days but did not provide the original records from which the listing was purportedly prepared.

9. During a portion of the years at issue petitioner operated from an office located at the Veterans Administration Building in Manhattan. Subsequently, his office was relocated to the World Trade Center in Manhattan.

10. Petitioner failed to show that he is properly entitled to either a rental loss or a business loss for New York State and City purposes for either year at issue herein.

CONCLUSIONS OF LAW

A. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law and section U46-39.0(e) of the Administrative Code of the City of New **York**, to show that he **is** entitled to a greater allowance for days worked without New York than that allowed as the result **of** the pre-hearing conference.

B. That petitioner has failed to sustain his burden of proof to show that he **is** properly entitled to a business loss or a rental loss during either year at issue.

C. That the petition of Edward Hardy and Mary Hardy **is** denied.

D. That the Notice **of** Deficiency issued June 17, 1983 is to be modified **so** as to reflect the adjustment made at the pre-hearing conference (see Finding of Fact "5", supra) and except as **so** stated, said notice is sustained together with such penalty and interest as may be lawfully owing.

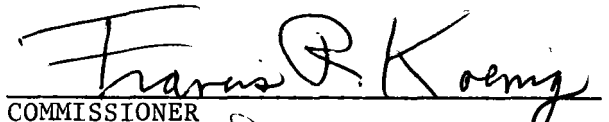
DATED: Albany, New **York**

STATE TAX COMMISSION


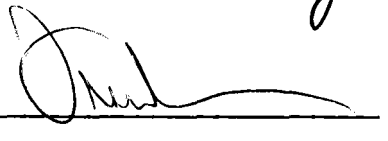
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PRESIDENT



COMMISSIONER

COMMISSIONER