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*O'Connell, John &  
Carmel*

**STATE OF NEW YORK  
STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATION OF  
JOHN AND CARMEL O'CONNELL**

**FOR REVISION OR REFUND OF PERSONAL INCOME  
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR  
THE YEAR 1959**  
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John and Carmel O'Connell having duly filed an application for revision or refund of personal income taxes assessed under Article 16 of the Tax Law for the calendar year 1959, and a hearing having been held in connection therewith on September 3, 1962 at the office of the State Tax Commission, 80 Centre Street, New York, New York before Martin Schapiro, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer, John O'Connell, appeared personally and was represented by Walter Morris, his attorney, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, a resident of the state of New Jersey, filed a nonresident personal income tax return for the calendar year 1959 allocating thereon income attributable to work done within and without the State of New York; that on September 12, 1962 an assessment was issued (Assessment No. AB-022795) disallowing the allocation of income attributable by the taxpayer, John O'Connell, to 44 days of work done at his New Jersey home.

(2) That prior to March 1959, the taxpayer was employed by the Hearst Publishing Company, Inc. as an Editor of Cosmopolitan Magazine; that for the remainder of the year the

taxpayer was employed by the aforesaid corporation as an Editor of the American Weekly Magazine; that the taxpayer's income was derived from his employment as Editor; that the taxpayer was employed pursuant to written agreements with the employer corporation; that the agreement of employment of the taxpayer as Editor of the American Weekly Magazine does not indicate the working place or hours of work except in that it provides as follows: "SECOND:- O'Connell shall during the period of employment hereunder: \* \* \*(2) Be at all times available to his superiors and to the Board of Directors and any committees appointed by or other representatives of such Board for consultation and advice in connection with his duties. \* \* \*THIRD:- O'Connell agrees that he will work as Editor of the American Weekly for Hearst, or for any corporation by it designated, exclusively, and that he will give and devote to the pursuit of his duties his full, complete and exclusive time (except reasonable vacation periods, the extent of which shall be determined by his superiors or the Board of Directors)."

(3) That the employer's offices were located in New York City and that the normal working hours of the staff were from 9:45 A. M. to 6:30 P. M. Mondays through Fridays; that the taxpayer worked at such offices during the week with the exception of Thursdays or an occasional Friday where he worked at home; that the taxpayer submitted an unsworn statement, (taxpayer's Exhibit 1) from William Randolph Hearst, the Editor-in-Chief of the Hearst Newspapers, which states, in part: "we recognize the absolute necessity of his maintaining an office at his home where he selects material for each issue. Mr. O'Connell spends one day a week in this pursuit."

(4) That the taxpayer contended that he was not

required to be at his home on Thursdays; that he stayed home on Thursdays because the office was geared to the fact that he would not be in on Thursdays and that his staying home on Thursdays was the most efficient way to operate; that although he had the authority to give directions not to be disturbed and to receive no telephone calls on Thursdays, during the course of a day he had numerous visitors who would have interrupted his work; that, however, at his home he was able to review materials submitted and write titles, and to read manuscripts without interruption.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby  
**DETERMINES:**

(A) That the taxpayer was not required either by contract or pursuant to any other direction of his employer to work one day a week at his home rather than in the office; that the performance of the taxpayer's work at his home rather than at the office of the employer was neither a necessary or essential condition of employment; that the primary purpose of working at home rather than the office was the convenience of the taxpayer; that, accordingly, the work done by the taxpayer at his home is attributable to New York State where the offices of the employer are located, and the taxpayer is not entitled to any allocation of income for such work outside of New York State.

(B) That, therefore, the additional taxes assessed against the taxpayer for the year 1959 under Article 16 of the Tax Law are correct and are due and owing, together with lawful interest and other lawful charges.

**DATED:** Albany, New York, on the 27th day of April , 1965.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
**President**

/s/

IRA J. PALESTIN  
**Commissioner**

/s/

JAMES R. MACDUFF  
**Commissioner**

## BUREAU OF LAW

## MEMORANDUM

TO: Commissioners Murphy, Palestin and Macduff

FROM: Martin Schapiro, Hearing Officer

SUBJECT: John and Carmel O'Connell application for revision or refund of personal income taxes for the year 1959

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N. Y., on September 3, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue raised herein is whether work done by the taxpayer, a New Jersey resident, at his home instead of the New York office of his employer, is work done outside of the State of New York allowing the taxpayer an allocation of income outside of the State.

The taxpayer was employed by the Hearst Publishing Company as an Editor of Cosmopolitan Magazine until March 1959 and then during the remainder of the year as an Editor of American Weekly, another Hearst publication. Although the taxpayer had submitted an unsworn statement from William Randolph Hearst, the Editor-in-Chief of the Hearst Publishing Company, that it was absolutely necessary for the taxpayer to maintain an office at his home, the taxpayer testified that he was not required to work at home. The taxpayer stated, however, that he worked at home on Thursdays instead of at the office which was open on such days, since (despite the fact that he could have given directions not to be disturbed) it was more efficient for him to work one day a week in his home without interruption, which day was spent in reviewing materials, writing titles and reading manuscripts. The taxpayer, however, was not required either pursuant to the terms of the contract or any direction of his employer to work one day a week at his home rather than at the office.

I am of the opinion that the primary purpose of working at home was for the convenience of the taxpayer in accordance with Matter of Burke v. Bragalini, 10 AD 2d 654, and Matter of Morehouse v. Murphy, 10 AD 2d 764. Accordingly, I have prepared a proposed determination denying any allocation of income for work done in the taxpayer's home outside the State.

For the reasons stated above, I recommend that the determination of the Tax Commission in this matter be substantially in the form submitted herewith.

Hearing Officer

MS:ca  
Enc.

April 15, 1965

Approved

Approved