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Income Tax Determin.

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# BUREAU OF LAW

**MEMORANDUM** Freudenheim, Milton B. + Eliz. E.

TO: The State Tax Commission

FROM: Francis V. Dow, Hearing Officer

SUBJECT: MILTON B. AND ELIZABETH E. FREUDENHEIM

Petition for a Redetermination of a Deficiency of Personal Income Tax under Article 22 of the Tax Law for the Year 1963

A hearing was scheduled to be held before me with reference to the above matter on February 9, 1967. The taxpayer, Milton B. Freudenheim, requested that a determination be made on the file without a hearing since it was not feasible for him to be present or represented at a hearing.

The issue involved herein is whether the nonresident taxpayer is entitled to allocate his salary on the basis of days worked at his home in New Jersey. The taxpayer claimed allocation of his 1963 salary of $14,062.96 on the basis of 172 days worked in New York State out of a total of 288 workdays. The taxpayer contends that the 116 days not allocable to New York State included 43 days in Africa and 73 days in which he worked at his New Jersey home on Sundays and weekdays. A notice of deficiency and a statement of audit changes were issued finding additional income tax and interest due in the sum of $137.21 based on a disallowance of time spent at the taxpayer's home on Sundays as workdays. Other days worked at home were considered to be New York workdays in the allocation formula. In addition to his salary, the taxpayer earned $375 in New York.

The taxpayer is a correspondent for the Chicago Daily News, covering the Eastern United States, the United Nations, and occasionally overseas. He was on call 24 hours a day 6 days a week. Saturday was not a normal workday and was excluded from the computation by both the taxpayer and the Department. The taxpayer was required to work on Sundays and file reports for Monday's edition of the newspaper. The taxpayer's employer which had no office in this State other than an advertising office, did not furnish him with an office. The taxpayer was required to travel to wherever news developed and to write and wire his stories from a nearby Western Union office or newspaper wire service office.

During the year the taxpayer spent 43 days in Africa on an assignment. Some of the time worked by him at his New Jersey home was related to his African trip. The number of days worked in his home with regard to this trip is not clear from the record. Some of the other work performed by the taxpayer at his home related to stories involving areas other than New York State. The record, however, does not show that his news sources for these stories were located outside of New York State.

It is my opinion that Sundays were improperly excluded as workdays in the allocation formula since he was required by his employer to work for a total of six working days per week. The taxpayer was not required by contract or any direction of his employer to work at his home on such Sundays and other days of the week. The taxpayer's primary purpose for working at his home was his convenience and was not a necessary or essential condition of his employment. Accordingly, these Sundays should be considered New York workdays.

However, by way of equity, 11 days worked at home on Sundays and other workdays should be considered as out-of-state workdays to allow for work done at home which related to his African trip and was not connected with New York sources. The 11 days are computed as the ratio that the number of days that the taxpayer was in Africa bears to the days worked at home and his total workdays.

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

/s/ FRANCIS V. DOW
Hearing Officer

FVD:lb
Enc.
March 1, 1967

5-7-68

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION :

OF :

MILTON E. & ELIZABETH [illegible] FREUDENHEIM :

FOR A REDETERMINATION OF A DEFICIENCY :
OF PERSONAL INCOME TAX UNDER ARTICLE
16 OF THE TAX LAW FOR THE YEAR 1963 :

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Milton and Elizabeth Freudenheim, the taxpayers herein, having duly filed a petition for redetermination of a deficiency of personal income tax under Article 16 of the Tax Law for the year 1963, and the taxpayers having requested that a determination be made on the evidence submitted without a hearing, and the matter having been examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a nonresident tax return for 1963 in which they allocated the salary of $14,[illegible] of the taxpayer, Milton E. Freudenheim, on the basis of 170 days worked in New York State out of a total of [illegible] workdays.

(2) That a notice of deficiency and a statement of audit changes (File No. [illegible]) were issued on November [illegible], 1965 finding additional income tax and interest due in the sum of $[illegible] based on a disallowance of Sundays as workdays when the taxpayer performed services in his New Jersey home and included other days worked at his home in the New York working day factor in the allocation formula.

(3) That the taxpayer, Milton E. Freudenheim, is a correspondent for the Chicago Daily News covering the Eastern United States and has periodic overseas assignments; that the said taxpayer was required to work six days a week; that Saturday was not a normal workday; that the taxpayer was not provided an office by his employer;

that space is provided the taxpayer without charge by the United Nations where he can perform work; that the taxpayer was required to move where news developed and to write and file his copy from a nearby Western Union office or newspaper wire service office.

(4) That the taxpayer worked 295 days during 1963; that the taxpayer worked 73 days in his home in New Jersey, which days included 45 Sundays; that the taxpayer was required by his employer to work on the 45 Sundays.

(5) That the taxpayer, Milton B. Freudenheim, was assigned to work in Africa for 43 days, which workdays included six Saturdays; that some of the said taxpayer's workdays spent at his home related to his African assignment; that the evidence produced by the taxpayer does not show the number of workdays utilized by him in his home which were related to the African trip.

(6) That the taxpayer did not show that he covered any news stories from sources other than Africa which required him to perform work outside of New York State.

(7) That the taxpayers' deductions were $2,369.48; that their exemptions were $3,600.00; that the taxpayer, Milton B. Freudenheim, in addition to his salary income had other New York source income in the amount of $375.00.

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

DECIDES:

(A) That 45 Sundays worked by the taxpayer in his New Jersey home are recognized as workdays in allocating the taxpayer's salary since he was required by his employer to work on those days.

(B) That the income which the taxpayer, Milton B. Freudenheim, received for work performed by him at his New Jersey home relating to his assignment in Africa was not derived from or connected with New York sources; and is computed by apportioning his workdays at home in the ratio that the number of days spent in Africa bears to the total number of workdays since the taxpayer did not show the number of days in which he worked in his home which related to his African assignment and, accordingly, 11 days worked at home are days worked outside of New York State and the balance of the 73 days amounting to 62 days.

(C) That the taxpayer failed to establish that the 62 days worked by the taxpayer in his New Jersey home were days worked on other than New York assignments; that they are determined to be New York workdays since the taxpayer was not required either by contract or pursuant to any other direction of his employer to work at his home on such assignments and that the taxpayer worked at his home for his own convenience on such days; that the income derived by the taxpayer for those workdays was derived from or connected with New York sources.

(D) That the tax due from the taxpayers as nonresidents is recomputed as follows:

| | |
|---|---|
| Workdays in New York excluding work done at home, and excluding Sat. | 179 |
| Workdays at home | 73 |
| Workdays in Africa | 43 |
| Total days worked | 295 |

$\frac{\text{Days worked in Africa}}{\text{Total workdays}}$ $\frac{43}{295}$ x 73 workdays at home = 11 workdays at home allocable to outside sources and 62 workdays at home allocable to New York State

| | |
|---|---|
| Workdays in New York excluding work done at home and excluding Sat. | 179 |
| Workdays at home allocable to New York State | 62 |
| Total days allocable to New York State | 241 |

| | | | | |
|---|---|---|---|---|
| Workdays in New York / Total days worked | [illegible] | x | $14,062.50 | = $11,488.34 |
| Other New York Income | | | | 372.00 |
| Total New York Income | | | | $11,860.34 |

New York itemized deductions:

| | | | |
|---|---|---|---|
| $11,860.34 / $14,382.75 | x | $2,369.48 | = $ [illegible] |
| Balance | | | $ 9,900.79 |
| Exemption | | | 3,600.00 |
| New York taxable income | | | $ 6,300.79 |

| | |
|---|---|
| Tax on above | $229.04 |
| Statutory credit | [illegible] |
| New York Tax | [illegible] |
| Taxes paid | [illegible] |
| Additional tax due | $117.93 |
| Interest computed to 11/22/65 | [illegible] |
| | [illegible] |

(F) That the notice of deficiency and statement of audit changes (File No. 3-[illegible]) determining additional personal income tax due and interest in the amount of $137.31 is hereby modified to the extent of $7.68; that the said notice of deficiency in the modified amount of tax and interest of $128.68 computed to November 22, 1965, the date of the notice of deficiency, is correct and does not include any tax or other charges which could not have been lawfully demanded and the taxpayers' petition for redetermination of a deficiency of personal income tax for the year 1963 with respect thereto except as modified herein be and the same is hereby denied.

DATED: Albany, New York this 28th day of May 1968.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
President

/s/ A. BRUCE MANLEY
Commissioner

/s/ SAMUEL E. LEPLER
Commissioner