

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

BUREAU OF LAW

Income Tax Determinations
A-Z

MEMORANDUM

Meyer, Helen and
William B.

TO: **State Tax Commission**

FROM: **Seleson Sies, Hearing Officer**

SUBJECT: **WILLIAM B. & HELEN MEYER**

Assessment 6A299633-1960
Article 22

A hearing was held in the above matter at the New York City office on September 8, 1966.

The issues involved herein are: (1) timeliness in the filing of the application for revision or refund; (2) timeliness in the filing of a demand for a hearing; and (3) allocation of earnings of non-resident taxpayer.

The taxpayers filed non-resident returns for the year 1960. They were then residing in Connecticut, and are presently residents of Neenah, Wisconsin. During the year 1960 the taxpayer William B. Meyer was sales manager of the printing and business paper division of Kimberly-Clark Corp., (Manufacturers of Kleenex) a foreign corporation organized under the laws of the State of Delaware, maintaining its principal place of business in Neenah, Wisconsin and authorized to do business in the State of New York. The aforementioned corporation maintained an office at 250 Park Avenue, N.Y.C. The taxpayer was in charge of the office and received a salary of \$27,600 per year. He was also required to travel outside the state on behalf of the corporation.

On his return, the taxpayer, William B. Meyer, claimed that he had worked 164 days within the state and that the total working days during the year were 366. The taxpayer included Saturdays, Sundays holidays, vacation and days of illness as days of work.

The assessment was mailed to the taxpayers on February 20, 1962 holding that Saturdays, Sundays, holidays, vacation and illness were not recognized for purposes of the allocation formula except for two Sundays, March 13th and September 25th, which were spent in traveling in accordance with the diary submitted by the taxpayer. The Income Tax Bureau held that the total days worked during the year 1960 by the

taxpayer amounted to 238; that he worked outside the state 63 days; that the days worked by him within the State of New York totaled 175 so that his New York taxable income amounted to \$5,694 and imposed additional tax in the amount of \$532.93. The taxpayer wrote letters to the Income Tax Bureau on March 30, 1963; June 4, 1963 and October 1, 1963 protesting the assessment. I am of the opinion that the protest letters of the taxpayer constituted a timely application for revision or refund.

On March 30, 1963 and again on June 26, 1963 the Income Tax Bureau wrote taxpayer advising him that they were further adjusting the assessment to reflect 70 days worked outside the state and cancelling the assessment in part, to the extent of \$71.99. The representative for the taxpayer replied on August 6, 1963 requesting that an additional 33 days be added to total days worked outside the state. There was a further exchange of correspondence. I am of the opinion that the letter of the Department dated June 26, 1963 he deemed a letter of denial and the reply of taxpayer's representative dated August 6, 1963 a timely demand for a hearing.

With respect to the substantive issue, the taxpayer originally claimed that he was required to work at home on Saturdays and Sundays catching up on his paper work and also making himself available for phone calls to sales people in various states since he was the sales manager of the eastern states. He was also required, he claims, to travel to Chicago, Louisville and Atlanta and to the headquarters of the corporation in Neenah, Wisconsin.

At the hearing, however, he no longer claimed credit for Saturdays and Sundays worked at home. (Minutes of Hearing, Page 14) He contended that his secretary who maintained his diary for him failed to indicate the Saturdays and Sundays on which he left to travel; that she merely indicated those days which were included in a week in which he was engaged in travel.

The taxpayer's representative had written the Income Tax Bureau offering to compromise the matter by agreeing to an additional allocation of 33 days (Saturdays and Sundays worked at home) which was rejected. At the hearing the taxpayer estimated that 40 to 50% of the 33 days involved such travel when he claims to have departed on a Saturday or Sunday. (Minutes of Hearing, Page 12) However, he stated that

(3)

he had no records to substantiate such contention. I believe that the additional 7 days credited to the taxpayer included such travel; that the taxpayer has failed to establish that he is entitled to any additional allocation of days worked outside the state.

For the reasons stated above I recommend that the determination in the above matter be substantially in the form submitted herewith.

June 17, 1968

6-27-68

Solomon Sies
Hearing Officer

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE APPLICATION

OF

WILLIAM B. & HELEN MEYER

**FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR
THE YEAR 1960.**

The above-named taxpayers having duly filed a timely application for revision or refund of personal income taxes under Article 22 of the Tax Law for the year 1960, the Department of Taxation & Finance having mailed a letter of denial of said application to the taxpayers and the latter having filed a timely demand for a hearing, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N. Y. on the 6th day of September, 1966 before Solomon Sins, Hearing Officer of the Department of Taxation & Finance, at which hearing the taxpayer William B. Meyer appeared personally, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That William B. and Helen Meyer filed a joint Non-Resident New York State Income Tax Return for the year 1960 in which they indicated their residence address as 65 Lakewood Road, New Canaan, Connecticut; that the taxpayer William B. Meyer reported wages received from Kimberly-Clark Corporation,

Neenah, Wisconsin in the amount of \$27,000; that the taxpayer William B. Meyer claimed an allocation of wages for work performed both within and without the State of New York; that the aforementioned taxpayer claimed that the total of days worked by him during the year 1960 was 266; that he was required to work outside the State of New York 202 days and that the days worked within the State of New York amounted to 164 days; that in accordance with the allocation formula of days worked within the State of New York over the total working days multiplied by the amount of earnings, the taxpayer reported income attributable to New York sources in the amount of \$12,367.21.

(2) That on February 20, 1962, the Department of Taxation & Finance made an additional assessment against the taxpayers recouping the tax due on the ground that Saturdays and Sundays, (except when spent in actual travel) holidays, vacation and days of illness, which are not days of work, are excluded from the total days in the year; that the diary of the days worked outside the State of New York submitted by the taxpayer, William B. Meyer, indicated that he was traveling on business during two Sundays, March 13th and September 24th; that the information contained in the diary showed a total of 62 days worked outside the State of New York; that the total number of non-working days was 190 and the total days worked during the year 1960 amounted to 230; that, accordingly, the tax was recomputed and additional tax imposed in the amount of \$332.93; that on February 20, 1963 the Department of Taxation & Finance cancelled a portion of the additional tax imposed in the assessment to the

extent of \$71.99 on the basis of permitting or allowing the taxpayer credit for 70 days worked outside the State of New York instead of 63 days as originally determined.

(3) That during the year 1960 taxpayer William B. Meyer was employed as sales manager of the Eastern Division of Kimberly-Clark Corporation, a domestic corporation organized under the laws of Delaware and maintaining its principal place of business at Kenosha, Wisconsin; that the aforementioned corporation was authorized to transact business within the State of New York and maintained offices at 250 Park Avenue, New York, N. Y.; that the taxpayer was in charge of said office; that the taxpayer received a salary from the aforementioned corporation in the amount of \$27,600; that the taxpayer was required to travel outside the State of New York on business on behalf of his employer on various occasions in connection with his work.

(4) That the taxpayer originally contended that he was required to work on Saturdays and Sundays at home to catch up with his paper work and to be available for phone calls to salesmen when he supervised; that he was required to work 7 days a week; that at the hearing, the taxpayer stated that "I would just as soon forget that part of it." (Minutes of Hearing, Page 14); that the taxpayer contended at the hearing that his secretary who kept his diary neglected to record therein those Saturdays and Sundays on which he left to travel; that he estimated that this involved between 21 to 26 days; that he had no records to substantiate such contention; that the taxpayer has failed to establish that he is entitled to an allocation of more than 70 days worked

outside the State of New York during 1960 which included Saturdays and Sundays spent traveling.

(5) That the Saturdays and Sundays worked by the taxpayer at home and which were disallowed from the allocation of days worked outside the State of New York were not, in fact, working days and were properly eliminated from the total claimed as working days outside the state.

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

(A) That there was no necessary ingredient required by the nature of the services performed by the taxpayer which necessitated the State of Connecticut or the home of the taxpayer as the locus for performance; that such services were performed by the taxpayer at his home for his greater convenience and the income derived therefrom was attributable to services rendered within the State of New York in accordance with the provisions of §632(c) of the Tax Law.

(B) That the taxpayer was entitled to an allocation of only seventy (70) days worked outside the State of New York.

(C) That the notice of additional assessment (Assessment 0990633) as partially cancelled to the extent of \$71.99 for the year 1960 is correct; that the same does not include any tax or other charge which could not have been lawfully demanded and that the taxpayers' application

for revision or refund filed by them with respect thereto
be and the same is hereby denied.

WITNES Albany, New York 19th day of July, 1960.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
President

/s/

A. BRUCE MANLEY
Commissioner

/s/

SAMUEL E. LEPLER
Commissioner