

STATE OF NEW YORK
STATE TAX COMMISSION

Income Tax Determination
Rowe, Wyndell A. & Hazel N.
H-2

In the Matter of the Petition

of

WYNDELL A. & HAZEL N. ROWE

For a Redetermination of a Deficiency or
a Refund of PERSONAL INCOME
Taxes under Article(X) 22 of the
Tax Law for the (Year(S) 1961

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Patricia Conley, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 23rd day of October, 1969, she served the within
Notice of Decision (~~on Determination~~) by (certified) mail upon Mr. Wyndell A. Rowe,
(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Wyndell A. Rowe, 204 West Hiawatha Trail,
Mt. Prospect, Illinois, 60057

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~of~~) petitioner herein and that the address set forth on said wrapper is the last
known address of the (~~representative of the~~) petitioner.

Sworn to before me this

23rd day of October, 1969.

Grace E. Pritchard

Patricia Conley

Mr. Rook

Attached proposed decision is
for signature by the Commission
upon your approval.

October 16, 1969

LAN:pw

A handwritten signature in black ink, appearing to be 'Lawrence A. Newman', written in a cursive style.

From Lawrence A. Newman

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Mr. Rook
FROM: Lawrence A. Newman
SUBJECT: Wyndell A. & Hazel N. Rowe
Article 22, Year 1961
Non-resident allocation of salary modified;
Decision grants petition in part.

DATE October 16, 1969
OFFICE Hearing Unit

Mr. Wyndell A. Rowe responded to a notice of hearing by letter wherein he requested that the hearing officer close the case without conducting a formal hearing.

I requested the Litigation Unit of the Law Bureau to review the history of the case because the taxpayer alleged that his representative, now deceased, had settled this matter with the Income Tax Conferee. I was advised that a partial allowance had been offered but rejected by the representative.

The partial allowance, based upon the conferee's examination of the records submitted at that time, is adopted as the basis for the proposed decision.

Lawrence A. Newman
LAWRENCE A. NEWMAN
Hearing Officer

LAN/lh

(original & copy to
SAC, New York 10/23/69)

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|--|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| WYNDELL A. & HAZEL N. ROWE | : | DECISION |
| for a Redetermination of a Deficiency | : | |
| or for Refund of Personal Income Taxes | : | |
| under Article 22 of the Tax Law for | : | |
| the Year 1961 | : | |

The taxpayers, Wyndell A. and Hazel N. Rowe have filed a petition for a redetermination of a deficiency or for refund of Personal Income taxes under Article 22 of the Tax Law for the year 1961.

In response to a notice of formal hearing, the petitioner requested by letter that the matter be closed based upon the informal conferences held in July, August and September, 1965 between petitioner's representative, Mr. Claude N. Hoke (deceased) and Mr. David Simon, Conferee for the Income Tax Bureau. The report of the Conferee dated October 26, 1965 stated that the petitioner's representative "disagreed with the proposed adjustments based on substantiated working days out of New York State."

The petitioner's complete tax file has been submitted to the State Tax Commission for an examination and decision.

FINDINGS OF FACT:

1. The petitioners timely filed a New York State income tax non-resident return for the year 1961.

Mr. Wyndell A. Rowe's occupation was described as "sales manager." The return includes an allocation of income and expenses based on a formula of the fraction of 87 days worked in New York State over a total of 237 working days. The resulting fraction

was applied to a total salary of \$19276.81 and total itemized deductions after adjustments of \$3700.80. The amounts for New York were computed by the taxpayers to be salary of \$7075.71 and New York itemized deduction of \$1467.37.

2. On March 15, 1965, the Income Tax Bureau of the Department of Taxation and Finance issued a notice of deficiency, file numbered 1-5396608, for the year 1961 in the amount of \$607.51 plus statutory interest. The deficiency was based upon a disallowance of the allocation of salary income after the taxpayer had failed to answer an audit inquiring letter of December 10, 1964.

3. On May 7, 1965, the taxpayers filed a petition for redetermination of the deficiency for the year 1961. The petitioners mentioned in their petition that they had since moved from Norwalk, Connecticut to Mt. Prospect, Illinois.

4. The taxpayer's representative submitted to the Conferee, a copy of the taxpayer's travel schedule for the year 1961 to substantiate the taxpayer's allocation of salary income to New York State.

An analysis was made, and of the 150 days claimed as working days out of New York State, only 62 days were substantiated. The balance of 88 days consisted of working days where the location could not be substantiated or were actually spent at home for various reasons.

5. The petitioner has failed to prove that the said 88 days were spent without the State of New York, or that the taxpayer was required by the employer to be without the State on the said days, but the petitioner alleges that on the said days, he was engaged in services on behalf of his employer.

These additional days are therefore deemed to be working days attributable to activities within New York State.

6. The total number of working days stated on the taxpayer's return of 237 days is accepted as correct.

Based upon the facts contained in paragraph 4 above, the days worked without New York State are deemed to be 62 days, and the balance of 175 days are deemed to be days worked within New York State.

DECISION

A. The petitioner's allocation formula for computing the amount of salary for New York for the year 1961 is redetermined as follows:

| | |
|------------------------------------|-----------|
| Total working days | 237 |
| Days worked outside New York State | <u>62</u> |
| Days worked inside New York State | 175 |

B. The notice of deficiency is hereby redetermined to conform to the following computation of the petitioner's New York State income tax liability for the year 1961:


| | |
|--|-------------------|
| 175/237 X \$19276.81 - Salary earned within N.Y. | \$14233.93 |
| Total Federal Income | <u>\$19276.81</u> |
| New York Deduction | <u>\$ 3700.80</u> |
| \$14233.93/\$19276.81 X \$3700.80 | 2732.66 |
| Balance | <u>\$11501.27</u> |
| Exemption | <u>2400.00</u> |
| New York Taxable Income | <u>\$ 9101.27</u> |
| Tax on above | \$ 387.09 |
| Statutory credit claimed | <u>25.00</u> |
| New York tax | \$ <u>362.09</u> |
| New York tax previously stated | <u>63.33</u> |
| ADDITIONAL PERSONAL INCOME TAX DUE | \$ 298.76 |

C. Interest at 6% per annum shall be added to the amount of additional personal income tax due, computed to the date of payment, or to within 30 days thereof.

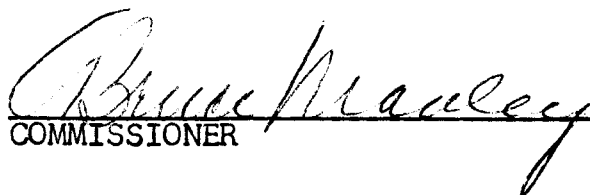
D. The petition for redetermination is hereby granted in part,
as stated within paragraphs A, B and C above.

DATED: Albany, New York this 23rd day of October, 1969.

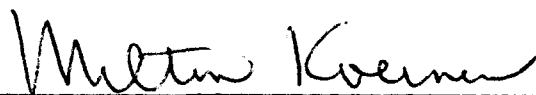
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER

May 26, 1969

Mr. Wyndell A. Rowe
204 West Hiawatha Trail
Mt. Prospect, Illinois 60057

Re: Wyndell A. Rowe and Hazel N. Rowe
Notice of Hearing
Article 22 Year 1961
June 4, 1969 9:30 A.M.

Dear Mr. Rowe:

I was sorry to learn by reading your letter of May 23, 1969, that your representative, Mr. Hoke, had conveyed to you the impression that this matter had been concluded at the time of the informal conference in 1965. I can further understand the problems resulting from the necessary records not being in your possession presently.

Obviously, I cannot grant a postponement of this case for a period of four years, as you had requested. However, if a request for a reasonable postponement is submitted, I will favorably consider it.

I am sure you understand that I do not have the authority to conclude a case without conducting a formal hearing.

Very truly yours,

LAWRENCE A. NEWMAN
Hearing Officer

LAN:pw

cc Mr. Roof

DEPARTMENT OF TAXATION AND FINANCE
INCOME TAX BUREAU

Mr. Rook - Secretary to State Tax Commission
TO.....

Please reply to attached correspondence
sent to Commissioner Manley.

IT 443 (3-69) 6/2/69

From Edward D. Igoe

E. D. Rook
Com. Manley
sent this to
Mr. Igoe
with 5/26

Mr. Lawrence A. Newman
State of New York
Department of Taxation & Finance
State Campus
Albany, New York 12226

JUN - 2 1969
OFFICE OF THE
DIRECTOR

Mr. Lawrence A. Newman
State of New York
Department of Taxation & Finance
State Campus
Albany, New York 12226

Dear Sir:

I received the attached correspondence from your office dated April 22, 1965.

I am assuming your files are incomplete on this subject matter. In March of 1965, I received correspondence from your department which apparently was the second notification. I did not receive the prior one probably because it was not forwarded by the post office in Connecticut where I formerly lived. That correspondence dealt with this same subject matter and was signed by Mr. S. W. Kneel. Subsequent to that I appointed a Mr. Claude N. Hoke of New York as my representative and made him my power of attorney.

On July 2, 1965, I received correspondence from Mr. David Simon of your department advising of a conference to be held in New York. Prior to that time I had written Mr. Hoke and given him the complete information which is detailed in the attached letter to him.

Subsequently, he met with Mr. Simon two or three times - the results of which satisfied him that my tax report and files were in order. I was advised by Mr. Hoke that the matter was closed and dropped.

When I received your attached notice, to say I was surprised was an understatement. I certainly have not retained any records for eight years dealing with this matter - particularly in view of the fact that the matter had been reviewed in 1965, closed and no correspondence or notification concerning the matter subsequent to that time.

To further complicate matters you copied Mr. Hoke and I received a letter from his widow that he passed away in 1968. All of the correspondence as having forwarded to him in 1965 was retained by him. It may have not been destroyed in the interim as one has knowledge of his whereabouts.

Mr. Lawrence A. Newman

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7 May 1969

As I previously mentioned, I do not believe your files indicate that this matter was reviewed in 1968, or the results of any reviews.

I will certainly appreciate your consideration of this matter and advice from you that it is closed. I'm sure you can appreciate my position since I have been living in the Chicago area since 1963. I have already undergone considerable expense and inconvenience attempting to satisfy the inquiry which was erroneous in the first place.

Respectfully yours,

W. A. Kohn