

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of :

RICHARD I.N. WEINGART :

Affidavit of Mailing
of Notice of Decision,
by Registered Mail

For a Redetermination of a Deficiency :
or a Refund of Personal Income :
Taxes under Article(s) 22 of the Tax :
Law for the year(s) 1962 :

State of New York
County of Albany

Lynn Horodowich , being duly sworn, deposes and
says, that she is an employee of the Department of Taxation and
Finance, and that on the 16th day of September , 1969, she served
the within Notice of Decision (or of "Determination") by registered
mail upon Richard I. N. Weingart
the petitioner in the within proceeding, by enclosing a true copy
thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Richard I. N. Weingart, c/o Harry Posner, CPA, 1143 5th Ave. NY NY
and by delivering the same at Room 214a, Building 8, Campus, Albany,
marked "REGISTERED MAIL" to a messenger of the Mail Room, Building
9, Campus, Albany, to be mailed by registered mail.

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

Sworn to before me this

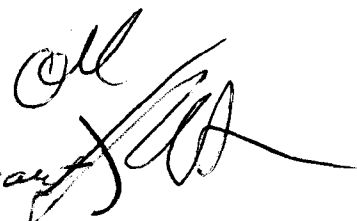
16 day of September , 1969.

Grace E. Pritchard

Lynn M. Horodowich

To.....Mr. Rook.....

To be submitted for signature of the
Commission upon your approval.

all
(Richard S. D. Weingart) 

LH

From Lawrence A. Newman

STATE OF NEW YORK
STATE TAX COMMISSION

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	:	of Notice of Decision,
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Mr. Harry Posner, CPA, 1143 Fifth Ave., N.Y. N.Y.

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Sworn to before me this

16th day of September, 19 69

Grace E. Pritchard

Lynn M. Horodowich

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Edward Rook
FROM: Lawrence A. Newman
SUBJECT: Decision in the Matter of the
Petition of Richard I.N. Weingart
under Article 22 of the Tax Law
for the Year 1962.

Income Tax
Decision A-Z
Weingart, Richard I.N.
DATE August 11, 1969
OFFICE Hearing Unit

On Mr. Weingart's non-resident return for the year 1962, he allocated his salary received from the American Totalisator Division. The formula consisted of 98 days of employment within New York State over a denominator of 365 alleged working days. The status of non-residence was not put in issue.


The Income Tax Bureau, after some correspondence with the taxpayer and his representative, disallowed the allocation formula completely on two basis. First they questioned the allegation that he was employed for 365 days. Secondly, he had failed to supply the requested information in regard to his business activities both within and without New York State as well as the number of days of employment without New York State.

The surrounding circumstances cast a doubt on the total number of working days. The representative testified that by his own observation, the petitioner was suffering from a physical disease which eventually required considerable medical attention and surgery during the year 1962 and eventually resulted in the removal of the petitioner's larynx. The representative testified that the petitioner communicates with him with the aid of an artificial device.

The petitioner did not offer any evidence at the hearing concerning his business activities both within and without the State and did not submit any evidence as to the actual number of days he was engaged in employment for the American Totalisator Division. Moreover, a written contract of employment permits him considerable liberty in the pursuit of any other business activities he may have.

In my opinion, the petitioner has not introduced sufficient evidence or facts which could lead me to sustain his original employment allocation formula. Accordingly, I have drafted an opinion sustaining the notice of deficiency as issued by the Income Tax Bureau.

This decision is offered for the approval of the Commission.


LAWRENCE A. NEWMAN
Hearing Officer

LAN:pw

December 8, 1969

Mr. Richard I. N. Weingart
P. O. Box 1526
Nassau, Bahamas, B.W.I.

Re: Decision of the State Tax Commission
Personal Income taxes, year 1962

Dear Mr. Weingart:

Your letter dated November 20, 1969, was referred to me for consideration and reply.

Upon notice addressed to you and to Mr. Harry Posner, a formal hearing was held before me. Mr. Posner appeared, by authority of your written power of attorney, to represent your interests and present your case.

Under these circumstances, your letter does not furnish any legal reason to support a rehearing of this matter.

However, if you wish to pursue the matter further, a proceeding to review the decision of the Tax Commission may be commenced in the Supreme Court of New York pursuant to the provisions of Section 690 of the Tax Law within four months after the mailing of such decision.

Very truly yours,

LAWRENCE A. NEWMAN
Hearing Officer

In the Matter of the Petition :
of :
RICHARD I. N. WEINGART : DECISION
for Redetermination of a Deficiency of :
Personal Income Taxes under Article 22 :
of the Tax Law for the year 1962 :
:

The matter has been duly examined and considered and the State Tax Commission hereby finds:

Included in these totals was a salary of \$82,535.91, of which the petitioner attributed \$22,160.33 as income allocated to services rendered within New York State. The petitioner based his allocation on a fractional formula of 98 days worked in New York State, over 365 working days for the year, applied to the total salary received.

The New York itemized deduction was computed as \$8630.51 by determining the proportion that the New York income bears to total Federal income and applying this proportion to the total Federal deduction (after proper adjustments) of \$64,015.21.

2. On audit of the petitioner's tax return, the Income Tax Bureau disallowed the allocation of salary income and considered the entire salary of \$82,535.91 to be earned within the State of New York. The New York itemized deductions were recomputed and increased from \$8630.51 to \$28,268.95 based upon the increased proportion of total income attributed to New York State.

On August 17, 1964, the Bureau issued a notice of deficiency to the petitioner, based on this recomputation, in the amount of \$3182.76.

3. The petitioner entered into an employment contract in September, 1958 with Universal Controls Inc., a publicly held corporation of which the petitioner is a minority stockholder. The petitioner's address shown on the contract was 860 Fifth Avenue, New York City which was then his residence. The corporate mailing address shown was that of its president, M. Mac Schwebel, 30 Broad Street, New York City. The petitioner's present address is in Nassau, the Bahamas, British West Indies.

4. The petitioner is employed by Universal Controls, Inc., in its American Totalisator Division receiving under a contract, a fixed annual salary and one percent of the net profits of this Division of the employer. The terms of the written employment contract require the petitioner to furnish service of an advisory or consultative nature. The contract further stated that the petitioner may devote a substantial portion of his time and effort, other than in the performance of his duties to the employer provided the activities are not in competition with his employer.

5. The petitioner contends that he is available for consultation 365 days each year by his employer. The petitioner contends that he spent 98 days in the State of New York during the year 1962 while engaged in this employment and an unspecified number of days outside the State of New York and/or the United States in this employment. The petitioner contends that he is on call for consultation by telephone on a seven day per week basis, including Saturdays, Sundays and Holidays. The petitioner submitted a list of 98 days during the year 1962 which he contended he was within New York State on business for his employer.

6. The taxpayer was present within the United States and/or New York State during the year 1962 for medical attention which eventually resulted in the removal of his larynx and he now speaks with the assistance of a mechanical device. The petitioner also underwent surgery in the United States during the year 1962.

7. The petitioner has failed to submit evidence of his employment activities on behalf of his employer at locations outside New York State as to number of days or nature of activities. The petitioner has failed to submit evidence of his employment activities during the days which he contends he was present within the State of New York. The petitioner has failed to present evidence that consultations by telephone while he is residing in the Bahama Islands were not solely for the convenience of the petitioner rather than a requirement of his employment.

8. The taxpayer, Richard I. N. Weingart has failed to prove that he was required to perform services for his employer outside the State of New York, or that any consultive services performed by the taxpayer at his home outside the State of New York was for any reason except the convenience of the taxpayer.

9. The taxpayer has failed to prove or establish the total number of working days in which he performed services for his employer during the year 1962.

Based upon all the evidence presented, and the resulting findings of fact,

The State Tax Commission hereby

DECIDES:

1. The entire salary and other compensation derived by the petitioner from the terms of his employment during the year 1962 with Universal Controls, Inc., is attributable to his employment activities within the State of New York.

2. The allocation of salary compensation as claimed by the Petitioner in his non-resident personal income tax return for the year 1962 was correctly disallowed by the Income Tax Bureau and the resulting recomputation of the New York itemized deduction was proper.

3. The notice of deficiency issued against the petitioner dated August 17, 1964 in the amount of \$3182.76 as previously determined by the Income Tax Bureau, is correct and is hereby sustained.

Dated: Albany, New York this 11th day of **September**, 1969.

STATE TAX COMMISSION

Norman Gellman

PRESIDENT

Bruce Manley

COMMISSIONER

Milton Korman

COMMISSIONER