

STATE OF NEW YORK  
STATE TAX COMMISSION

TAX Income  
ART. 22 SECS. 689  
KEY WORDS NONRESIDENT -  
ALLOCATION OF SALARY  
DECISION

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

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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 | 62         |
| Days worked inside New York State  | <u>175</u> |

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  | 2400.00           |
| 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

*Walter Gillman*

PRESIDENT

*Bruce Madley*

COMMISSIONER

*Milton Koerner*

COMMISSIONER

