

days worked in New York, including days worked at home in New Jersey and days spent in Florida due to illness as days worked outside New York.

4. Taxpayer's employer included the taxpayer's commissions as total wages paid in 1962 as reported in IT-2102, withholding tax statement.

5. An audit of the return resulted in the issuance of a deficiency, file number 2-7122706, dated June 7, 1965 in the amount of \$2,457.70 plus interest. This deficiency was arrived at by including days worked at home in New Jersey as days worked in New York and deducting days spent in Florida due to illness from the total number of working days as claimed by taxpayer on IT-2332, allocation of Personal Service Compensation Questionnaire. This resulted in a total number of working days of 174 and days worked in New York of 162.

6. Petitioner's representative concedes the total number of working days to be 174. However, the representative now requests an allocation as follows:

a. Allocating his base salary of \$20,000.00 as to days worked in New York in accordance with Article 22, Section 632(c), Regulation 131.16.

b. Allocating commission income on the basis of percentage of New York billings by the advertising firm on the taxpayer's two accounts in accordance with Article 22, Section 632(c), Regulation 131.15.

7. Regulation 131.16 specifically excludes from its provisions those employee covered by Regulation 131.15.

DECISION

A. Taxpayer must allocate his salary and commission using the formula based upon days worked in New York.

B. Taxpayer has failed to sustain his burden of proof that work done at his home was out of necessity and not convenience. These days are therefore considered as days worked in New York.

C. The notice of deficiency is correct and the petition is denied.

DATED: Albany, New York
November 18, 1970

STATE TAX COMMISSION

Norman Hellman

COMMISSIONER

Bruce Mauley

COMMISSIONER

William Korman

COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOSEPH P. CIRAOLO : DEFAULT ORDER
for Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
pursuant to Article 22 of the Tax :
Law for the Year 1961 :
:

The above-named taxpayer has petitioned the State Tax Commission for a redetermination of his tax deficiency as issued by the State Tax Commission on his 1961 personal income tax return. A formal hearing on the petition was scheduled for October 28, 1970 at 2:45 P.M. at the offices of the State Tax Commission in the City of New York, before Hearing Officer, Lawrence A. Newman. Notice of said hearing was duly given to the taxpayer, the taxpayer failed to appear at the hearing and no one appeared on his behalf. His default has been duly recorded.

On motion of the attorney for the Department of Taxation and Finance, IT IS ORDERED that the petition is hereby denied.

DATED: Albany, New York
December 28, 1970

STATE TAX COMMISSION

Norman Gellman

COMMISSIONER

Bruce Pringle

COMMISSIONER

Milton Kerner

COMMISSIONER