STATE OF NEW YORK STATE TAX COMMISSION Ciraolo que 1970

In the Matter of the Petition

of

Joseph P. Ciraolo

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CERTIFIED) 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) 1961 :

State of New York County of Albany

Martha Funaro , 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 29thday of December , 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Joseph P.

Ciraolo (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph P. Ciraolo 89-29 163rd Street Jamaica, New York 11432

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.

Hartha Fuxard

Sworn to before me this

29th day of December , 1970.

Linda Wilson

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

OMMISSIONER

COMMISSIONER

COMMISSIONE

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 Jecember 28, 1970 STATE TAX COMMISSION