

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
JOHN B. WALKER AND CONSTANCE M. WALKER :
For a Redetermination of a Deficiency : DECISION
or for a Refund of Personal Income : ON
Taxes under Article 22 of the Tax Law : DEFAULT
for the year 1961 :
:

The petitioner having filed a petition for a redetermination of a deficiency or for a refund of personal income taxes under Article 22 of the Tax Law for the year 1961 and a hearing having been duly scheduled at the offices of the Department of Taxation and Finance at 80 Centre Street, New York, New York, on February 19, 1970, before Francis X. Boylan, Esq., Hearing Officer, and the Department having appeared by E. H. Best, Counsel, (Solomon Sies, Esq. of counsel) and there having been no appearance on behalf of the petitioner and the record having been duly examined and considered, the State Tax Commission finds that:

1. The failure of any appearance on behalf of the petitioner at the scheduled hearing constituted a default.
2. By a notice of deficiency, dated March 15, 1965, and an attached statement of audit changes, the State Tax Commission notified petitioner that it determined that there was a deficiency of personal income taxes for the year 1961 in the amount of \$1009.77 together with interest in the amount of \$176.71, to a total of \$1186.48 for the said year as of the date of the said notice.
3. In their returns petitioners allocated only a portion of their respective salaries - 36 New York days of 242 days worked - to New York. Petitioner was an executive for two affiliated corporations at New York, New York, each paying his salary and his

wife was his secretary; her salary was paid by one of the two said corporations.

The statement of audit changes in effect disallowed the allocation of only a portion of such income to New York, determining in effect all of such salary income was from New York sources. A failure to reply to a letter dated December 29, 1964, which asked for substantiation of the right to the allocation claimed was cited in the statement of audit changes.

4. Petitioner's (John B. Walker's) salaries from the two corporations aggregated \$11,200.00 in 1961, his wife's salary was in the amount of \$4,800.00. In prior years he had received a salary of \$25,000.00 from the two corporations; and it is found that he was on a semi-retired status in 1961 and that his arrangement with the corporations was such that his positive duties, if any, at this time were not well-defined.

5. Statements made in support of petitioner's contention by his representative at the preliminary hearing and by him in correspondence that the time he spent at home in New Jersey, or in Florida where he stayed for a number of months, or on visits made to state-side and foreign cities were in effect on assignment by his employers, at their request and in their interest and for sales promotion in their behalf, so as to make such places situs of employment outside of the State for the purpose of allocation, were not sufficiently direct and unequivocal to establish the conclusions contended for, or to negate that his presence at such places was for personal reasons or on business not that of his employers.

Accordingly, the State Tax Commission hereby

DECIDES:

A. that the said determination of a deficiency was not unlawful or incorrect.

In order to establish a right to allocate only a portion of the salary from New York employers to this State, the petitioners had to establish that the employment of the petitioner, John, (and correspondingly that of his secretary, his wife) had a situs outside of New York; that is to say, that his presence outside the State was necessary by reason of some exigency or need of the business and not for reasons personal to him or for his convenience or for other business purposes. This was not shown.

B. that said deficiency set forth in paragraph 2 hereof is affirmed and constitutes an assessment of taxes as of the date of the said notice thereof. The said assessment is subject to further interest at 6% per annum as provided by Tax Law (§§684 and 685).

DATED: Albany, New York
April 29, 1970

STATE TAX COMMISSION

Roman Gallina
PRESIDENT

Bruce Massey
COMMISSIONER

Milton Kerner
COMMISSIONER