

STATE OF NEW YORK
STATE TAX COMMISSION

Buckley

In the Matter of the Petition
:
of
:
John W. & Ann H. Buckley
:
For a Redetermination of a Deficiency or
a Refund of Personal Income
:
Taxes under Article(s) 16 & 22 of the
Tax Law for the (Year(s) 1959 & 1960, 1961 & 1962

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

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 11th day of January , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon John W. & Ann H. Buckley (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John W. & Ann H. Buckley
c/o Connecticut Bank & Trust Co.
1 Constitution Plaza
Hartford, Connecticut 06115
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.

Sworn to before me this
11th day of January , 19 71

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

John W. & Ann H. Buckley

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 & 22 of the
Tax Law for the (Year(s) 1959 & 1960, 1961 & 1962

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11th Floor - Fleming Building
800 17th Street, N.W.
Washington, D.C. 20006
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.

Sworn to before me this

11th day of January , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
and Petition of	:	
JOHN BUCKLEY AND ANN BUCKLEY	:	DETERMINATION
for Revision or Refund of Personal	:	(Art. 16)
Income Taxes under Article 16 of the	:	DECISION
Tax Law for the year 1959 and under	:	(Art. 22)
Article 22 for the years 1960, 1961	:	
and 1962	:	

John Buckley having duly filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959, and having duly filed an application for revision or refund (serving as a petition) as to the year 1960, and petitions for the years 1961 and 1962 for a review of additional assessments for those years, and a hearing having been held thereon at the offices of the State Tax Commission, 80 Centre Street, New York City, New York, on November 23, 1965, before Frank M. DeBellis, Esq., Hearing Officer, and the petitioner John Buckley having appeared in person and testified and having appeared by John E. Boice, Jr., Esq. of Washington, D. C., and P. Lincoln Cornell, Esq. of Washington Depot, Connecticut, having been present and having testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds that:

1. By notices of additional assessment AB023027 and AB023047, both dated September 14, 1962, and by two notices of deficiency and statements of audit changes dated April 13, 1965, the State Tax Commission assessed additional normal income tax against petitioners for the years 1959, 1960, 1961 and 1962 in the respective amounts of \$5,284.92 for 1959, \$4,391.31 for 1960, \$2,116.34 for 1961 and \$1,634.10 for 1962. Thereafter by letter

of January 26, 1965, the 1959 assessment was reduced by a partial cancellation in the amount of \$1801.99 and the 1960 assessment was reduced by the amount of \$816.99.

The right to allocate only a portion of his income to New York claimed by the petitioner (John Buckley) in his joint return for all years was disallowed, as to the 1959 and 1960 returns initially because of a failure to supply information requested.

The modifications, above stated, resulted from an allowance of an allocation of income earned outside the state except as to days worked by petitioners at an office at Sharon, Connecticut, as to which the claimed right to allocate them as days worked outside the state was denied and as to certain Saturdays and Sundays claimed as working days, and as to weekdays worked there, which were disallowed as days worked outside the state for purposes of allocation. (Weekdays are being allowed in this decision).

The statement of audit changes for 1962 similarly disallowed days worked at Sharon, Connecticut, as days worked outside the state for purposes of allocation.

The assessment for 1961 employed a percentage factor derived from the information provided for the other three years to fix the amount of income allocable to New York.

As to 1959 and 1960 an expense allowance not reported on the returns as income was taxed to petitioners as additional income by the notices of additional assessment which as to 1959 initially assessed \$7500, the whole gross amount of the expense allowance. The later partial cancellation in effect assessed as additional income only the net amount after allowing actual expenditures claimed as an offset; and the 1960 assessment on its face offset the estimated expenditures against the aggregated income (salary and the gross expense allowance).

2. In his returns petitioner allocated only a portion of his salary as a corporation executive to New York making the allocation on the basis of 365 claimed working days. In the 1959 return he acknowledged 83 days worked in New York, and in 1960, 86 New York days. In his 1961 return he used a New York factor of 36.08% and in 1962 a New York factor of 28.73%.

3. Petitioners resided at Lakeville, Connecticut; and petitioner, John Buckley, was the president and principal stockholder of Catawba Corporation.

4. Catawba Corporation, a closed corporation, was engaged in rendering technical and administrative services to public corporations engaged in the discovery and development of oil wells in the United States and in foreign countries.

It maintained offices at New York, New York, at Hartford, Connecticut and Sharon, Connecticut, and at other locations in this country and abroad. Clerical and other staff were employed at the New York and Hartford offices, but the premises at Sharon, Connecticut, about ten miles from petitioner's residence, had no office staff. The Sharon premises, a country estate, had a number of buildings and other improvements on it, and one building had been converted for use as office facilities. These office accommodations were used also by James Buckley, a brother of petitioner and vice-president of the corporation. A sister of petitioner also used portions of these buildings for the conduct of her personal business or unrelated employment.

5. The Catawba Corporation observed a five-day week, Mondays through Fridays, for its personnel at its New York, New York, and Hartford, Connecticut, offices and also observed at least eight holidays annually, as it is found.

6. Petitioner testified that, when he was not away travelling on business, he normally spent Mondays at the Sharon, Connecticut, offices, usually conferring with a local lawyer (Mr. Cornell), and left from home for New York, New York, a distance of about 106 miles, on Tuesday mornings, travelling by train or car, and in the latter case stopping off at Sharon to pick up papers; Wednesdays and Thursdays were put in at the New York office and he would leave late Thursday afternoon for Connecticut, he stated; Fridays were spent in the Sharon office.

On Saturdays he might spend several hours at Sharon, two Saturdays a month in the winter months and once a month in the summertime, the petitioner testified.

7. In making the allocation of income, petitioner in effect attributed two and one-half days in each such week to New York, as was shown in a memorandum of calendar days attributed outside the state, respectively based on a calendar diary kept by petitioner.

Accordingly, the State Tax Commission hereby decides:

A. It is held that in the schedule of a working week as set forth in ¶6 and 7, three days (not two and one-half) in such weeks, - Tuesdays, Wednesdays and Thursdays - constituted New York days, and that the casual contact with the Sharon office on some such Tuesdays did not allow of their being considered one-half out-of-state (Connecticut) days; and accordingly the days worked in New York in 1959, 1960 and 1962 are found and held to be as hereinafter set forth below in paragraph D.

B. That, pursuant to provisions of Tax Law §359.3 of Article 16 which provides in the case of non-residents that gross income includes only income from services within the state and of Tax Law §§171 and 383 authorizing appropriate regulations, and pursuant to Tax Law §632(c) of Article 22 which provides that if an occupation (or employment) is carried on only partly within the

state, as determined under regulations, the income derived from or connected with New York sources shall be determined by apportionment and allocation under such regulations, and pursuant to regulation 20 NYCRR 263.2 governing Article 16 which provides that the gross income of non-resident employees including corporate officers includes that portion of the total compensation for services which the total number of working days employed within the state bears to the total number of working days employed both within and without the State and that in making such computations there shall be excluded non-working days such as Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation or leave with or without pay (and providing for deducting certain such leave pay from the total income before apportionment) and pursuant to Regulation 131.6 (20 NYCRR 131.6) which makes the same provisions as to nonworking days including Saturdays, Sundays, holddays, and days of absence, etc. and points out that allowance claimed for days worked outside the State must be based upon the performance of services, which of necessity as distinguished from convenience, obligate the employee to out-of-state duties in the service of his employer, (a principle which also applied under Article 16) it is held, in the circumstances, that the employment-related duties performed by taxpayer on Saturdays, and holidays at the Sharon office, and on Sundays at home or at the Sharon office, which were self-imposed obligations and generally were of a solitary and studious nature, performed only for a part of the day in most cases and in an office that was not open for business generally, did not constitute such Saturdays, Sundays or holidays to be other than nonworking days for purposes of allocation. Such work on these days was not done out of necessity within the regulation's intent.

C. That the weekdays worked by petitioner at the office, at Sharon, Connecticut, other than Saturdays, Sundays and holidays are held allowable as days worked outside the State.

When a corporation does business outside the State in another State and maintains a regular office there, as Catawba Corporation does here at Hartford and affords a special office for a corporate officer, its president, at a different location in that State near his place of residence, the work done there must be deemed done at such location out of "necessity" rather than personal convenience within the meaning intended since there is an adequate business reason for the work's being done wherever in such a State the employer chooses to furnish the employee with a formal work place.

D. That accordingly the allocation formula for each year is fixed as hereinbelow indicated for the respective year and the taxes are recomputed as follows:

1959

Wages	\$60,000.00
Excess of expense allowance over actual expense, charged to tax- payer as income	<u>4,475.00</u>
Total	<u>\$64,475.00</u>
Amount allocated to New York State 103/234	\$28,380.02
Less optional deduction	<u>1,000.00</u>
Balance	\$27,380.02
Less personal exemption	<u>3,000.00</u>
Taxable balance	<u>\$24,380.02</u>
Normal tax on above	\$ 1,798.00
Statutory credit	<u>25.00</u>
Normal tax due	\$ 1,773.00
Normal tax paid	<u>400.08</u>
Additional personal income tax due	<u>\$ 1,372.92</u>

1960

Total income	<u>\$63,424.00</u>
Allocated to New York State 115/248	\$29,410.32
Less deductions as stated	<u>4,000.00</u>
Taxable balance	<u>\$25,410.32</u>
Tax on above	\$ 1,901.03
Less statutory credit	<u>25.00</u>
Balance	\$ 1,876.03
Less 10%	<u>187.60</u>
New York tax due	\$ 1,688.43
New York tax paid	<u>358.37</u>
Add personal income tax due	<u>\$ 1,330.06</u>

1961

Total compensation reported	<u>\$48,000.00</u>
New York income (factor derived from 1959, 1960 and 1962) 46.096%	\$21,665.12
Standard deduction	<u>1,000.00</u>
Balance	\$20,665.12
Exemptions	<u>3,000.00</u>
Balance	<u>\$17,665.12</u>
Tax on above	\$ 1,126.51
Tax computed on return	<u>683.66</u>
Additional personal income tax due	<u>442.85</u>

1962

Total compensation	<u>\$61,526.35</u>
New York income $114/238 \times \$61,526.35$	\$29,470.60
Less New York deductions, prorated $\$29,470.60/61,526.35 \times \$19,297.55$	<u>9,243.36</u>
Balance	\$20,227.24
Less exemptions	<u>3,000.00</u>
New York taxable income	<u>\$17,227.24</u>
Tax on above	\$ 1,082.72
Tax withheld	<u>623.63</u>
Additional personal income tax due	<u>\$ 459.09</u>

E. The assessments and deficiencies are so modified, and sustained as modified.

F. Pursuant to Section 684 of the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York
January 7, 1970

STATE TAX COMMISSION

Norman Gallivan

COMMISSIONER

Bruce Mawley

COMMISSIONER

Milton Green

COMMISSIONER