

STATE OF NEW YORK
STATE TAX COMMISSION

*Donnelly, Simon J. &
Katherine
P.W. Inc. Oct 22*

In the Matter of the Petition

of

SIMON J. & KATHERINE DONNELLY

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, 1966,
1967 and 1968.

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

State of New York
County of Albany

Linda Wilson, 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 8th day of December, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon SIMON J. & KATHERINE DONNELLY (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Simon J. & Katherine Donnelly
333 North Ocean Boulevard
Deerfield Beach, Florida
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

8th day of December, 1971.

Arthur L. Lanza

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SIMON J. & KATHERINE DONNELLY

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, 1966, :
1967 and 1968.

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

State of New York
County of Albany

Linda Wilson, 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 8th day of December, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon SIDNEY MEYERS, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Sidney Meyers, Esq.
51 Chambers Street,
New York, New York

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

8th day of December, 1971

Martha Funnell

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
SIMON J. & KATHERINE DONNELLY : DECISION
for Redetermination of Deficiencies or :
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Years 1961, 1966, 1967 and 1968. :

Simon J. Donnelly and Katherine Donnelly, his wife, filed petitions for redetermination of deficiencies or for refund of personal income taxes under Article 22 of the Tax Law for the Years 1961, 1966, 1967 and 1968.

A formal hearing was held with respect to the petitions for redetermination of deficiencies for the years 1961, 1966 and 1967 before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on December 14, 1970. The petitioners were represented by Sidney Meyers, Esq., and the Income Tax Bureau by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

On March 25, 1971, the petitioner's representative authorized the State Tax Commission to associate the petition relating to the year 1968, and dispose of it as part of the hearing held for the years 1961, 1966 and 1967.

FINDINGS OF FACT

1. Simon J. Donnelly and Katherine Donnelly, his wife, filed New York State nonresident income tax returns for the years 1961, 1966 and 1967 and 1968.

2. The Income Tax Bureau issued notices of deficiency based upon disallowances of the allocations within and without New York State of the personal service compensation of Mr. Donnelly. The deficiencies were issued as follows:

<u>Year</u>	<u>Date</u>	<u>File No.</u>	<u>Deficiency (before interest)</u>
1961	April 13, 1965	1-6762745	\$ 951.76
1966	November 24, 1969	73255709	728.79
1967	November 24, 1969	73255709	828.79
1968	August 31, 1970	8-13234727	<u>1,012.19</u>

3. The petitions for redetermination were timely filed.

4. Mr. Simon J. Donnelly was president of R.A. Stewart & Co., Inc. (hereinafter called Stewart) for approximately 35 years. The corporate office was in New York City.

5. Stewart manufactured rubber stamps and distributed marking devices and parts obtained from other suppliers. In addition, Stewart was a stockholder in its major suppliers. These suppliers owned plants in Philadelphia, Elizabeth and Caldwell, New Jersey and Illinois.

6. Mr. Donnelly was also employed by the supplier - corporations, and compensated by them. Mr. Donnelly would visit the plants of these suppliers to resolve problems involved in producing the merchandise that was later sold to Stewart. Mr. Donnelly did not keep any record of the days when work was performed for each corporation, and he was not required to spend any definite period of time on behalf of these corporations.

7. Mr. Donnelly has failed to prove any number of work days which he may have spent outside the State of New York on behalf of his employer, R.A. Stewart and Co., Inc. during each of the years 1961, 1966, 1967 and 1968.

DECISION

A. Mr. Simon Donnelly performed the services for which he was compensated by R.A. Stewart & Co., Inc., solely within the State of New York for the years in question.

B. Mr. Donnelly is not permitted to allocate any part of his compensation from R.A. Stewart & Co., Inc. outside the State of New York for the years in question.

C. The deficiencies are sustained and the petitions are denied.

DATED: Albany, New York

December 8, 1971.

STATE TAX COMMISSION

Norman Gullman

COMMISSIONER

George M. Hawley

COMMISSIONER

Milton Korman

COMMISSIONER