

STATE OF NEW YORK
STATE TAX COMMISSION

PLEASANTON
Personal Income
22

In the Matter of the Petition

of
DOUGLAS W. A. AND FAITH
PLEASANTON

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) 1960 and 1961

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 19th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon DOUGLAS W. A. AND FAITH PLEASANTON (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Douglas W. A. and Faith Pleasanton
Meadow Wood Drive
Greenwich, Conn.
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

19th day of January, 1971

Garth Fuzaro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
DOUGLAS W. A. AND FAITH
PLEASANTON

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7 Broad Street
Pawling, 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

19th day of January, 1971.

Martha Fucaro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
DOUGLAS W.A. AND FAITH W. PLEASANTON : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Years 1960 and 1961 :
:

Taxpayers having filed a petition pursuant to Section 689 of the Tax Law for a redetermination of deficiencies and for refund of personal income taxes under Article 22 of the Tax Law for the years 1960 and 1961 and a hearing thereon having been duly held on April 2, 1970 before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS :

1. The issue is the method of allocation to New York of Mr. Pleasanton's salary as an export manager.
2. The deficiencies asserted are for 1960, \$254.59 and for 1961, \$2,712.27 less a refund claimed on the return for \$711.05 for a net deficiency of \$2,001.22.
3. Taxpayers are residents of Greenwich, Conn.
4. Mr. Pleasanton was employed in New York City as an export manager by Allen - Bradley Company of Milwaukee, Wisconsin.
5. Mr. Pleasanton received as salary in 1960, \$10,800 plus a bonus of \$26,892.43; in 1961, \$10,800 plus a bonus of \$31,603.94.
6. Mr. Pleasanton's bonus is computed as 90% of a bonus computed for the whole office which itself is based on the volume of sales for the office as adjusted by a factor representing the costs for all export sales. The sales relevant to taxpayer's bonus are the total overall export sales of the company. The other 10% of the office bonus went to taxpayer's assistant.

7. The deficiency notices allocate the total salary received, including both the fixed sum and the bonus on the basis of the number of working days spent in the State out of the working days in the year. For 1960 this ratio is taken to be 166/291. For 1961 the ratio is assumed to be 100% for failure of taxpayer to supply relevant information.

8. Mr. Pleasanton allocated his salary on his returns by allocating his base salary by number of days worked in New York over the total working days in the year, such ratio being 171/291 for 1960 and 235/287 for 1961, and allocating his bonus by the ratio of his employer's costs in New York over his costs everywhere, such ratios varying by calendar quarters but being in the neighborhood of 2 or 3 per cent.

9. The taxpayer now wishes to allocate by assigning to New York that part of his bonus relating to sales directly to industrial customers and excluding sales made to representatives of his employer.

10. Allen-Bradley Company manufactures two main types of equipment motor control devices and radio components. They appoint sales representatives abroad. These are independent contractors who deal with the company through taxpayer. Eighty percent of overseas sales are made to these representatives who replenish orders made by them to local customers. The representative takes title to the goods ordered. Some orders are received directly from customers without going through the representatives and the company has a higher profit on such orders. The company's policy is to build up and maintain a network of good distributors.

11. Mr. Pleasanton supervises an office in New York City which has one assistant manager and seven clerical employees. He has the same status as a district manager of the company in any large United States City and is paid on a comparable basis. Mr. Pleasanton's duties in New York include servicing accounts, investigation of complaints, market research, collecting accounts and evaluation

of competitive factors.

12. Mr. Pleasanton's trips abroad were to visit with the representatives, to solicit orders from them, both on the spot orders and later mail orders, to visit customers of the representatives so as to solicit orders from them, and to learn of local business conditions.

13. Taxpayer has not supplied any information substantiating the days worked inside and outside of New York for 1961.

Upon the foregoing findings and all the evidence in the case
The State Tax Commission hereby

DECIDES:

A. Both the base salary and the bonus of taxpayer are paid for the same services. The salary is in no part based on only his own volume of sales. The salary is correctly allocable according to days worked inside and outside the State under Regulation 20 NYCRR 131.16 (Dalenz v. State Tax Commission 9 AD 2d 599).

B. An allocation of salary on the basis of days worked inside and outside the State is denied for 1961 for failure of proof.

C. The petition is denied and the deficiencies are sustained together with such interest, if any, as may be due under Section 684 of the Tax Law.

DATED: Albany, New York
January 18, 1971.

STATE TAX COMMISSION

Norman Gallivan

COMMISSIONER

Bruce Mauley

COMMISSIONER

Milton Kraemer

COMMISSIONER