

STATE OF NEW YORK
STATE TAX COMMISSION

*Speno, Frank Jr.,
& Peggie B.
Personal Income
Article 22*

In the Matter of the Petition

of

Frank Jr. & Peggie B. Speno

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

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 13th day of January , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Frank Jr.

& Peggie B. Speno (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Frank Jr. & Peggie B. Speno
200 Hobart Avenue
Summit, New Jersey

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

13th day of January , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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State of New York
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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 13th day of January , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Frank Jr. & Peggie B. Speno (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Charles W. Mayo
901 Western Bldg.
Buffalo, New York 14201

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

13th day of January , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK JR. & PEGGIE B. SPENO	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
year 1961	:	

Taxpayers petitioned for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1961. A formal hearing was held before Vincent P. Molineaux, Hearing Officer, at the offices of the State Tax Commission in the city of Buffalo, New York, on August 2, 1966. Taxpayer appeared in person and was represented by Charles W. Mayo, C.P.A.

FINDINGS OF FACT

1. Taxpayer and his wife filed a joint New York State Resident Return for the year 1961.
2. On April 13, 1965, the Department of Taxation and Finance issued deficiency file #1-8523109 for the amount of \$2717.91 plus statutory interest.

The assessment was based on a finding by the Income Tax Bureau that the days spent working at home do not serve as a proper basis for allocating income as to sources within and without New York State.

3. Frank Speno Jr. is the president of Frank Speno Railroad Ballast Cleaning Co., Inc. and has been for a number of years. He arranges for and enters into service contracts with various railroads throughout the United States, Canada, and at times in other countries. The principal office of the company is in Ithaca, New York. Mr. Speno's place of residence is in Summit, New Jersey, from which he

conducted some of his business activities.

4. Petitioner was not required by contract or pursuant to any direction to live in Summit, New Jersey; nor to use his residence as a place of departures for business trips, or the conduct of business activities.

5. Petitioner has failed to sustain his burden of proof that the work done at home is other than for his own greater convenience.

DECISION

A. The days worked at home are not recognized as days worked outside New York State for allocation of income purposes.

B. The assessment is sustained, and the petition is denied.

DATED:

January 13, 1971.

STATE TAX COMMISSION


COMMISSIONER

COMMISSIONER


COMMISSIONER