

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
WILLIAM BERKIN & SOPHIE BERKIN
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) 1966

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 30th day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon William Berkin & Sophie Berkin (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: William & Sophie Berkin
183 West 31st Street
Bayonne, 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

30th day of March, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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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 30th day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Steven A. Burn, Esq.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Steven A. Burn, Esq.
666 Fifth Avenue
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

30th day of March, 1972

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 30, 1972

**William & Sophie Berkin
183 West 31st Street
Bayonne, New Jersey**

Dear Sir and Madam:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WILLIAM BERKIN AND SOPHIE BERKIN : DECISION
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1966. :

Petitioners, William Berkin and Sophie Berkin, have filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1966. (File No. 68503167). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on December 14, 1971, at 1:15 P.M. Petitioners appeared by Stephen A. Burn, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel).

ISSUE

Was all of the income received by petitioners, William Berkin and Sophie Berkin, from Don Howard Personnel, Inc. during the year 1966 allocable to New York State?

FINDINGS OF FACT

1. Petitioners, William Berkin and Sophie Berkin, filed a New York State combined nonresident income tax return for the year 1966. They allocated their income for said year based upon the number of alleged working days they worked within and without New York State during said year.

2. On January 27, 1969, the Income Tax Bureau issued statements of audit changes against petitioners, William Berkin and Sophie Berkin, disallowing their allocation of income for the year 1966 and accordingly issued a Notice of Deficiency against petitioner, William Berkin, in the sum of \$818.80 and a Notice of Deficiency against petitioner, Sophie Berkin, in the sum of \$53.00.

3. Petitioners, William Berkin and Sophie Berkin, were residents of the State of New Jersey during the year 1966.

4. Petitioner, William Berkin, was employed by Don Howard Personnel, Inc. as a placement manager and personal recruiter during the year 1966. He specialized in finding positions for salesmen and sales managers in the business form field. He was paid on a straight commission basis. He was not reimbursed for his expenses by his employer. He was required as part of his duties to visit prospective employers, to develop and maintain client relationships and to solicit job orders particularly at executive levels. He spent 46 days during said year visiting prospective employers located outside of New York State. The remainder of his working time was spent in New York State.

5. Petitioner, William Berkin, failed to submit documentary or other sufficient evidence to prove the volume of business transacted by him within and without New York State.

6. Petitioner, Sophie Berkin, was employed by Don Howard Personnel, Inc. during the years 1966 to perform clerical services. Her duties consisted of filing, updating applications, sending out resumes and general typing. She was employed to assist her husband

in his business activities. She was required by her employer to perform a portion of her work at her home in New Jersey due to a lack of space in the corporate office in New York City.

7. Petitioner, Sophie Berkin, failed to submit documentary or other sufficient evidence to prove the number of days she worked in her home in New Jersey and in the New York office for Don Howard Personnel, Inc. during the year 1966.

CONCLUSIONS OF LAW

A. That petitioner, William Berkin, a nonresident of New York State during the year 1966, received compensation for services performed which depended directly upon the volume of business transacted by him. That this income derived from New York sources was allocable in proportion to the ratio that the volume of business transacted by him in New York State bore to the total volume of business transacted by him within and without New York State in accordance with the meaning and intent of NYCRR 131.15. He failed to prove what portion of his income was attributable to New York State under the aforesaid formula and therefore is not entitled to allocate any portion of his income. That his allocation based upon the number of days worked within and without New York State was improper since NYCRR 131.16 states that employees provided for under NYCRR 131.15 are excluded from using the allocation formula based upon number of days worked within and without the state.

B. That since petitioner, Sophie Berkin, a nonresident of

New York State, failed to prove the number of days she worked for Don Howard Personnel, Inc. within and without New York State during the year 1966, she is not entitled to allocate her income for said year in accordance with the meaning and intent of NYCRR 131.16.

C. That accordingly the petitions of William Berkin and Sophie Berkin are denied and the notices of deficiency issued January 27, 1969, are sustained.

DATED: Albany, New York
March 30, 1972

STATE TAX COMMISSION

Norman Galbraith

COMMISSIONER

Bruce Masley

COMMISSIONER

Milton Koenig

COMMISSIONER