

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROY W. MOORE, JR. AND MARY T. MOORE

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

Lynn 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 1st day of August, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon ROY W. MOORE, JR.

AND MARY T. MOORE (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Roy W., Jr. and Mary T. Moore
1481 Hillside Road
Fairfield, Connecticut

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

1st day of August, 1972.

Maitha F. Unad

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

Lynn 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 1st day of August, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon GEORGE J. SCHAEFER

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: George J. Schaefer
555 Madison Avenue
New York, New York 10021

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

1st day of August, 1972

Martha Furrow

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
August 1, 1972

Roy W., Jr. and Mary T. Moore
1481 Hillside Road
Fairfield, Connecticut

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(s)
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 relating 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 :
ROY W. MOORE, JR. AND MARY T. MOORE : DECISION
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1966. :

Petitioners, Roy W. Moore, Jr. and Mary T. Moore, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1966. (File No. 69180731). 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 April 28, 1972, at 10:30 A.M. Petitioners appeared by George J. Schaefer, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of Counsel).

ISSUE

Were days worked at home in Connecticut by petitioner, Roy W. Moore, Jr., during the year 1966 allocable to New York State?

FINDINGS OF FACT

1. Petitioners, Roy W. Moore, Jr. and Mary T. Moore, filed a New York State income tax nonresident return for the year 1966. They allocated petitioner, Roy W. Moore, Jr.'s salary income for said year based upon the number of alleged working days he worked within and without New York State during said year. They claimed that he worked 108 days during said year outside of New York State.

2. On March 31, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Roy W. Moore, Jr. and Mary T. Moore, imposing additional personal income tax due for the year 1966 in the sum of \$2,294.07 upon the grounds that 67 days of the 108 days claimed as having been worked outside of New York during said year were worked at their home in Connecticut and therefore were not properly included in the claimed allocation. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,563.92.

3. Petitioners, Roy W. Moore, Jr. and Mary T. Moore, were residents of the State of Connecticut during the year 1966. They resided at 1481 Hillside Road, Fairfield, Connecticut.

4. Petitioner, Roy W. Moore, Jr., was President, Chief Executive Officer and Chairman of the Board of Directors of Canada Dry Corporation during the year 1966. He had been president since 1957 and chief executive officer since 1961.

5. Canada Dry Corporation in 1966 was a Delaware corporation qualified to do business in both New York and Connecticut. It maintained an office at 100 Park Avenue in New York City. The New York City office was the world headquarters for general corporate and operational headquarters matters. The corporation also maintained an office and plant at 24 Old Track Road in Greenwich, Connecticut. The Greenwich office was its worldwide research office and basic ingredient extract manufacturing center. It also housed all quality control and purchasing functions. Petitioner, Roy W. Moore, Jr., had a private office at both locations. He used the New York City office as his

main office for conducting the affairs of the corporation. He had a full-time personal secretary at the New York office but not at the Greenwich office.

6. Petitioner, Roy W. Moore, Jr., maintained one room in his home in Fairfield, Connecticut as an office during the year 1966. He owned all of the office equipment and furniture in it. The telephone was paid for by Canada Dry Corporation. He was not reimbursed for any of the other office expenses by the corporation.

7. On January 12, 1966, petitioner, Roy W. Moore, Jr., underwent a gall bladder operation at Roosevelt Hospital in New York City. He was discharged from the hospital on February 12, 1966, at which time he commenced a period of convalescence at his home in Connecticut. He was confined to his home until March 27, 1966. He spent 38 days during this period working at home on corporate business. The bulk of this time was spent working on capital and operating budgets and other fiscal year end work. He conferred at home with key executives of the corporation. He spent 29 additional days scattered throughout the year working at home on corporate business. The work he performed on these 67 days constituted the type of work that he would normally perform at the New York City office.

8. At the formal hearing, petitioner, Roy W. Moore, Jr., contended that he was entitled to allocate 10 additional days to Connecticut for the year 1966. He claimed that these were days partially spent in the Greenwich, Connecticut office and were not claimed on the original return. He failed to submit any documentary or other substantial evidence to prove that he worked these additional days outside of New York State.

CONCLUSIONS OF LAW

A. That the 38 days worked at home in Connecticut required by reason of petitioner, Roy W. Moore, Jr.'s, physical condition during the year 1966 were by reason of his necessity and not for the necessity of his employer. The services performed by him at home were done for reasons of his personal health and convenience and were the type of services that he normally performed at the New York City office and not the Greenwich office of his employer. Therefore such days must be held to be days worked within New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

B. That the additional 29 days worked at home in Connecticut, during the year 1966 by petitioner, Roy W. Moore, Jr., were worked there by reason of his necessity and convenience and not for the necessity of his employer. The services rendered were the type he normally performed at the New York City office and not at the Greenwich office of his employer. Therefore such days must be held to be days worked within New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

C. That petitioner, Roy W. Moore, Jr., failed to prove that he worked 10 days outside of New York State in addition to the days claimed on his 1966 New York State income tax return.

D. That the petition of Roy W. Moore, Jr. and Mary T. Moore is denied and the Notice of Deficiency issued March 31, 1969, is sustained.

DATED: Albany, New York,

August 1, 1972.

STATE TAX COMMISSION

Norman Galbraith

COMMISSIONER

Bruce McAuley

COMMISSIONER

Matthew Kvern

COMMISSIONER