STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK L. & EILEEN M. SUGRUE

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) 1967

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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 31st day of   May , 19 72, she served the within Notice of Decision (or Determination) by (certified) mail upon Frank L. & Eileen M. Sugrue   (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Frank L. & Eileen M. Sugrue
                                  81 Glen Road
                                  Mountain Lakes, New Jersey   07046

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

31st day of   May   , 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

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

May 31, 1972

Frank L. & Eileen M. Sugrue
81 Glen Road
Mountain Lakes, New Jersey   07046

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 deci-
sion must be commenced within **4 Months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Enc.

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

FRANK L. SUGRUE AND EILEEN M. SUGRUE

for Redetermination of Deficiency or for
Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1967.

Petitioners, Frank L. Sugrue and Eileen M. Sugrue, 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 1967. (File No.

73018398). A formal hearing was scheduled before Paul B. Coburn,

Hearing Officer, at the offices of the State Tax Commission, 80 Centre

Street, New York, New York, for April 27, 1972 at 1:15 P.M. Prior to

the formal hearing, petitioners advised the State Tax Commission in

writing that they waived a formal hearing and requested that the State

Tax Commission decide the case upon the entire record contained in the

file. The State Tax Commission renders the following decision after

due consideration of said record.

ISSUE

Was all of the salary income received by petitioner, Frank L.

Sugrue, from World T. and I. Corporation during the year 1967 allocable

to New York State?

FINDINGS OF FACT

1. Petitioners, Frank L. Sugrue and Eileen M. Sugrue, filed a

New York State income tax nonresident return for the year 1967. They

claimed on said return that petitioner, Frank L. Sugrue, worked

140 days outside of New York State during said year and accordingly allocated his salary income for said year based upon said allegation.

2. On September 29, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Frank L. Sugrue and Eileen M. Sugrue, imposing additional personal income due for the year 1967 in the sum of $633.57 upon the grounds that time spent by petitioner, Frank L. Sugrue, at his home was not a proper basis for allocation of his salary income. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of $688.88.

3. Petitioners, Frank L. Sugrue and Eileen M. Sugrue, were residents of the State of New Jersey during the year 1967.

4. Petitioner, Frank L. Sugrue, was employed by World T. and I. Corporation, a division of Schenley Industries, Inc., during the year 1967. The office of his employer was located at 1290 Avenue of the Americas in New York City. He received a salary of $18,569.92 during said year from said corporation.

5. Surgery was performed on petitioner, Frank L. Sugrue, on five occasions between December 23, 1966 and June 23, 1967, at St. Clare's Hospital in Denville, New Jersey. Between each hospital stay he was confined to his residence in New Jersey for recuperative purposes. He returned to work at the New York office on July 31, 1967. During the period he was not physically present for work in the New York office and was not in the hospital, he was permitted by his employer to perform his New York office functions from his New Jersey home by use of mail, telephone and international cable services.

CONCLUSIONS OF LAW

A. That the days worked at home required by reason of petitioner, Frank L. Sugrue's physical condition during the year 1967 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 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 NYCRR 131.16. <u>Churchill v. Gallman</u>, 326 N.Y.S. 2d 917 (3rd Dept. 1971).

B. That the petition of Frank L. Sugrue and Eileen M. Sugrue is denied and the Notice of Deficiency issued September 29, 1969, is sustained.

DATED: Albany, New York   STATE TAX COMMISSION
          May 31, 1973

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COMMISSIONER

_____
COMMISSIONER

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COMMISSIONER