

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

JOSEPH P. FITZSIMMONS and  
MARILYN P. FITZSIMMONS  
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

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

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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 15th day of February, 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon JOSEPH P. & MARILYN P. FITZSIMMONS (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:

Joseph P. & Marilyn P. Fitzsimmons  
Valley Brook Road  
Long Valley, 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

15th day of February, 1973.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION

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

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
February 15, 1973

Joseph P. & Marilyn P. Fitzsimmons  
Valley Brook Road  
Long Valley, New Jersey

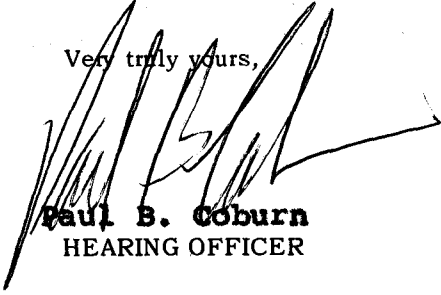
Dear Mr. and Mrs. Fitzsimmons:

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

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In the Matter of the Petition :  
of :  
JOSEPH P. FITZSIMMONS and :  
MARILYN P. FITZSIMMONS : DECISION  
for Redetermination of Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the :  
Year 1967. :

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Petitioners, Joseph P. Fitzsimmons and Marilyn P. Fitzsimmons, 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. 73127414). 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 November 17, 1972, at 10:30 A.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

Were 32 days worked at home in New Jersey during the year 1967 by petitioner, Joseph P. Fitzsimmons, allocable as days worked within or days worked without New York State?

FINDINGS OF FACT

1. Petitioners, Joseph P. Fitzsimmons and Marilyn P. Fitzsimmons, filed a New York State income tax nonresident return for the year 1967. They allocated the income received by petitioner, Joseph P. Fitzsimmons, from Lander Co., Inc. based upon the number of days he alleged to have been worked within and without New York State during said year. They claimed he worked 228 days during the year 1967, of which 128 were worked outside of New York State.

2. On July 28, 1969 the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Joseph P. Fitzsimmons and Marilyn P. Fitzsimmons, in which it computed total working days during the year as 241 and days worked outside of New York State as 68 1/2. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$194.98. In arriving at the computation, it treated 32 days alleged to have been worked at home by petitioner, Joseph P. Fitzsimmons, as days worked within New York State. The only issue raised by the petition was whether these 32 days should be considered days worked within or without New York State.

3. It was stipulated at the formal hearing that petitioner, Joseph P. Fitzsimmons, spent 32 days working at home during the year 1967.

4. Petitioners, Joseph P. Fitzsimmons and Marilyn P. Fitzsimmons, were residents of the State of New Jersey during the year 1967. They resided in a home located at Valley Brook Road, Long Valley, New Jersey.

5. Petitioner, Joseph P. Fitzsimmons, was employed as a outside salesman on a fixed salary by Lander Co., Inc. during the year 1967. The corporation was engaged in the business of manufacturing and selling low priced cosmetics and gift items. It maintained an office in New York City. It did not provide him with a desk or other office facilities in the New York office. He came to the New York office only on four or five occasions during the year. The rest of his time spent in New York State was spent calling on customers.

6. Petitioner, Joseph P. Fitzsimmons, maintained a room in his home which he used as an office during the year 1967. It was equipped with two filing cabinets, a desk and a phone. He was reimbursed for his telephone expenses by his employer. He used his home address on

on his business cards. He stored sample merchandise at his home. The days spent at home were usually Mondays or Fridays. He prepared orders at home and forwarded them directly to the company factory in Binghamton, New York. He mailed weekly reports to the New York office from his home in which he set forth his sales activities.

CONCLUSIONS OF LAW

A. That the 32 days worked at home in New Jersey during the year 1967 by petitioner, Joseph P. Fitzsimmons, were worked there by reason of his necessity and convenience and not for the necessity of his employer and therefore said 32 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.

B. That the petition of Joseph P. Fitzsimmons and Marilyn P. Fitzsimmons is denied and the Notice of Deficiency issued July 28, 1969, is sustained.

DATED: Albany, New York  
February 15, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER