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STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

H. RANDELL ATHERTON and  
LILYEN ATHERTON

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) 1969.

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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 3rd day of April, 1974, she served the within

Notice of Decision (or Determination) by (certified) mail upon H. RANDELL ATHERTON and

LILYEN ATHERTON (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

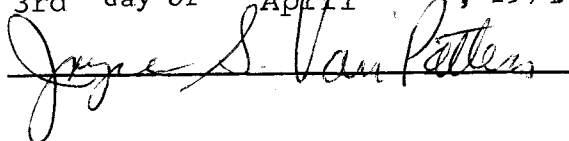
wrapper addressed as follows: Mr. & Mrs. H. Randell Atherton  
61 Lagunita  
Lagunita Beach, California 92651


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

3rd day of April, 1974

  
James S. Van Patten

  
Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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Tax Law for the Year(s) 1969.

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 3rd day of April, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon MARK SALZMAN, C.P.A.

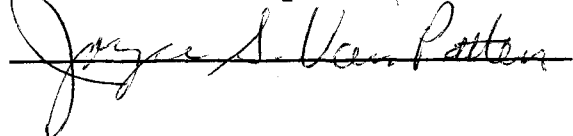
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
Mark Salzman, C.P.A.  
wrapper addressed as follows: c/o Gassman & Gassman  
11 West 42nd Street  
New York, New York 10036

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

3rd day of April, 1974







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  
Mario A. Procaccino  
~~XXXXXXXXXXXX~~ PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
April 3, 1974

Mr. & Mrs. H. Randell Atherton  
61 Lagunita  
Lagunita Beach, California 92651

Dear Mr. & Mrs. Atherton:

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,

Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
H. RANDELL ATHERTON and	:	DECISION
LILYEN ATHERTON	:	
	:	
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1969.	:	
	:	
	:	

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Petitioners, H. Randell Atherton and Lilyen Atherton, 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 1969. (File No. 9-33146540). 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 January 17, 1974, at 3:40 P.M. Petitioners appeared by Mark Salzman, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

What portion of the salary income received by petitioner, H. Randell Atherton, from Pritchard Wood Associates, Inc., during the year 1969, was allocable to New York State?

FINDINGS OF FACT

1. Petitioners, H. Randell Atherton and Lilyen Atherton, filed a New York State income tax nonresident return for the year

1969. They allocated salary income in the sum of \$43,000.08 received by petitioner, H. Randell Atherton, from Pritchard Wood Associates, Inc., based upon the number of days he alleged to have worked within and without New York State during said year. They claimed that he worked a total of 240 days during said year of which 163 days were worked in New York State. They demanded a refund of \$1,892.00.

2. On June 26, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, H. Randell Atherton and Lilyen Atherton, imposing additional personal tax for the year 1969 in the sum of \$801.40 upon the grounds that he worked a total of 245 days during said year of which 205 days were considered worked in New York State. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$907.02.

3. Petitioners, H. Randell Atherton and Lilyen Atherton, were residents of the State of Connecticut during the year 1969. They resided in a home located at Canoe Hill Road, New Canaan, Connecticut.

4. During the year 1969, Pritchard Wood Associates, Inc., was a marketing consultant company with offices located at 1345 Avenue of the Americas in New York City. Petitioner, H. Randell Atherton, was employed by said company as a marketing manager. His duties consisted of soliciting and overseeing accounts, conducting field research, entertaining clients and generally maintaining

communication with and overseeing clients interests. A great deal of his work was concentrated on accounts with business interests in Connecticut. A large portion of his time during said year was spent working on a marketing program for the Coca Cola Company in connection with a frozen concentrated coffee it wanted to market.

5. During the year 1969, petitioner, H. Randell Atherton, maintained a room in his home as an office. It was equipped with a telephone, a calculator, files, books, reference records and trade publications. He also maintained a commercial style kitchen in his home which he used in connection with his marketing activities. He found these facilities at home to be a more convenient location than the New York City office to do work requiring close concentration since he was not disturbed by meetings and telephones. It was also closer in proximity to many of the clients.

6. Petitioner, H. Randell Atherton, during the year 1969, worked a total of 245 days of which 38 days were weekdays worked at his home in Connecticut and of which 40 days were worked outside of New York, but not at his home. Five of said 40 days were either Saturdays or Sundays.

#### CONCLUSIONS OF LAW

A. That the 38 days worked at home in Connecticut during the year 1969 by petitioner, H. Randell Atherton, were worked there by reason of his necessity and convenience and not for the necessity of his employer and therefore, for purposes of allocation

of salary income, said 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 40 days worked outside of New York State and not at home in Connecticut during the year 1969 by petitioner, H. Randell Atherton, for purposes of allocation of salary income may be allocated as days worked outside of 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, therefore, for purposes of allocation of salary income for the year 1969, petitioner, H. Randell Atherton, worked a total of 245 days of which 205 days are considered to be days worked in New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

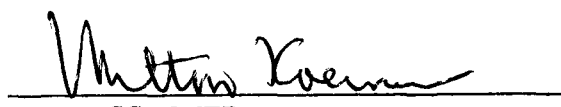
D. That the petition of H. Randell Atherton and Lilyen Atherton is denied and the Notice of Deficiency, issued June 26, 1972, is sustained.

DATED: Albany, New York  
April 3, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER