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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ORVILLE G., JR. & KATHLEEN V. BRIM

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

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) 1968, 1969 &
1970

State of New York
County of Albany

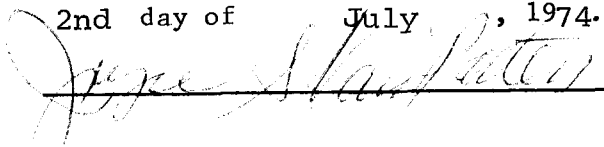
Martha Funaro, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of July, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Orville G., Jr. & Kathleen V. Brim (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Orville G. Brim, Jr.
172 Shore Road
Old Greenwich, Connecticut 06870

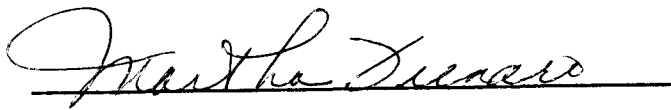
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

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

2nd day of July, 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

July 2, 1974

Mr. & Mrs. Orville G. Brim, Jr.
172 Shore Road
Old Greenwich, Connecticut 06870

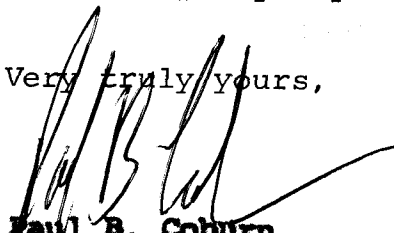
Dear Mr. & Mrs. Brim:

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

In the Matter of the Petitions :
of :
ORVILLE G. BRIM, JR. and : DECISION
KATHLEEN V. BRIM :
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1968, 1969 and 1970. :

Petitioners, Orville G. Brim, Jr. and Kathleen V. Brim, have filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968, 1969 and 1970. (File Nos. 9-33146679 and 0-53207871). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on May 16, 1974, at 1:15 P.M. Petitioner, Orville G. Brim, Jr., appeared pro se, and for his wife, Kathleen V. Brim. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUES

I. Were weekdays worked at home in Connecticut during the years 1968, 1969 and 1970 by petitioner, Orville G. Brim, Jr., allocable as days worked within or days worked without New York State?

II. Were determinations by the Income Tax Bureau in 1957 and 1967 that petitioner, Orville G. Brim, Jr., could allocate days

worked at home in Connecticut as days worked outside of New York State res judicata to a decision by the State Tax Commission for subsequent years?

FINDINGS OF FACT

1. Petitioners, Orville G. Brim, Jr. and Kathleen V. Brim, filed a New York State income tax nonresident return for the year 1966. They allocated the salary income received by petitioner, Orville G. Brim, Jr., from Russell Sage Foundation 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 226 days during the year of which 88 days were worked outside of New York State. They demanded a refund of \$444.00.

2. Petitioners, Orville G. Brim, Jr. and Kathleen V. Brim, filed a New York State income tax nonresident return for the year 1969. They allocated the salary income received by petitioner, Orville G. Brim, Jr., from Russell Sage Foundation based upon the number of days he alleged to have worked within and without New York State during said year. They claimed he worked a total of 223 days during the year of which 86 days were worked outside of New York State. They demanded a refund of \$1,457.00.

3. Petitioners, Orville G. Brim, Jr. and Kathleen V. Brim, filed a New York State income tax nonresident return for the year 1970. They allocated the salary income received by petitioner, Orville G. Brim, Jr., from Russell Sage Foundation based upon the number of days he alleged to have worked within and without New York State during said year. They claimed he worked a total of 224 days of which 52 days were worked outside of New York State. They demanded a refund of \$1,033.00.

4. On March 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Orville G. Brim, Jr. and Kathleen V. Brim, imposing additional personal income tax for the year 1968 in the sum of \$722.07 upon the grounds that 41 weekdays worked by petitioner, Orville G. Brim, Jr., at home during said year should be considered as days worked within New York State for purposes of allocation of salary income. It also imposed additional personal income tax for the year 1969 in the sum of \$325.25 upon the grounds that 45 weekdays worked by him at home should be considered as days worked within New York State for purposes of allocation of salary income. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,275.81.

5. On September 25, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Orville G. Brim, Jr. and Kathleen V. Brim, imposing additional personal income tax for the year 1970 in the sum of \$357.20 upon the grounds that 22 weekdays worked by petitioner, Orville G. Brim, Jr., at home during said year should be considered as days worked within New York State for purposes of allocation of salary income. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$388.15.

6. Petitioners, Orville G. Brim, Jr. and Kathleen V. Brim, were residents of the State of Connecticut during the years 1968, 1969 and 1970. They resided in a home located at 172 Shore Road, Old Greenwich, Connecticut.

7. Petitioner, Orville G. Brim, Jr., was employed by the Russell Sage Foundation as its president during the years 1968, 1969 and 1970. His duties as president consisted of acting as chief administrator of the foundation and carrying on research and writing in his field of sociology. He was provided with an office in the New York City offices of the foundation.

8. Petitioner, Orville G. Brim, Jr., maintained an extensive library concentrated in his field in sociology at his home in Connecticut during the years 1968, 1969 and 1970. He had collected these materials over a period of many years. They were not generally readily available at the New York City Public Library or at university libraries in New York City. He did his research and writing in the room he maintained as an office at his home. It was more convenient for him to perform this work at home since the materials and books were stored there.

9. Petitioner, Orville G. Brim, Jr., during the year 1968 worked a total of 226 days of which 35 weekdays were worked at his home in Connecticut and 47 days were worked outside of New York State, but not at his home. During the year 1969 he worked a total of 227 days of which 40 weekdays were worked at his home in Connecticut and 41 days were worked outside of New York State, but not at his home. During the year 1970 he worked a total of 224 days of which 22 weekdays were worked at his home in Connecticut and 30 days were worked outside of New York State, but not at his home.

10. The Income Tax Bureau for the years 1957 and 1967, after an audit, permitted petitioner, Orville G. Brim, Jr., to allocate days worked at his home in Connecticut as days worked outside of New York State.

CONCLUSIONS OF LAW

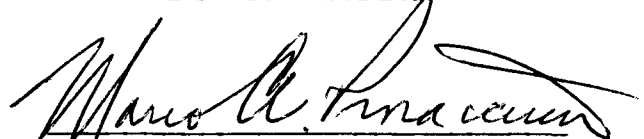
A. That the weekdays worked at his home in Connecticut during the years 1968, 1969 and 1970, by petitioner, Orville G. Brim, Jr., were worked there by reason of his necessity and convenience and not for the necessity of his employer, and therefore, for purposes of allocation of salary income said days 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 Income Tax Bureau's determination that petitioner, Orville G. Brim, Jr., was entitled to allocate days worked at his home in Connecticut during the years 1957 and 1967 as days worked outside of New York State is not res judicata to a decision by the State Tax Commission that weekdays worked at his home in Connecticut during the years 1968, 1969 and 1970 are to be allocated as days worked within New York State. Sundberg v. Murphy, 39 Misc. 2d 967, 242 N.Y.S. 2d 329, (Sup. Ct. Albany Co., 1963).

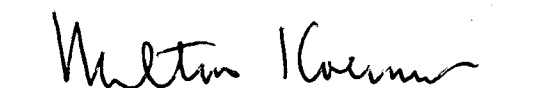
C. That the petitions of Orville G. Brim, Jr. and Kathleen V. Brim, are denied and the notices of deficiency issued September 25, 1972 and March 26, 1973, are sustained.

DATED: Albany, New York
July 2, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER