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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN J. CASLIN

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) 1967.

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 May, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon JOHN J. CASLIN

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

wrapper addressed as follows:

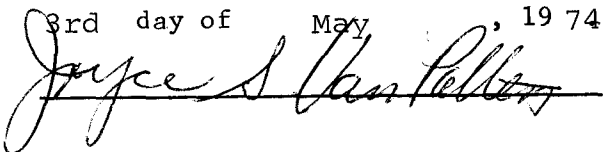
Mr. John J. Caslin  
P.O. Box 952  
Port Ewen, New York 12466

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 May, 1974





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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JOHN J. CASLIN

For a Redetermination of a Deficiency or  
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AFFIDAVIT OF MAILING  
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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 3rd day of May, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon JOHN J. CASLIN, JR., ESQ. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John J. Caslin, Jr., Esq.  
420 Lexington Avenue  
New York, New York 10017

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 May, 1974

*James S. Van Patten*

*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  
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  
**May 3, 1974**

**Mr. John J. Caslin**  
**P.O. Box 952**  
**Port Ewen, New York 12466**

**Dear Mr. Caslin:**

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,

**Nigel G. Wright**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau



Foods Corp. of Perth Amboy, New Jersey. He was paid a fixed salary by them in 1967 of \$29,500.00, on which both Federal and New Jersey taxes were withheld. Petitioner admits for the purposes of this proceeding that he solicited business in New Jersey, New York, Pennsylvania and other states and that 25% of the sales orders that he took were produced in New York State.

2. Petitioner paid, through withholding, the sum of \$1,631.30 to New Jersey under its Emergency Transportation Tax. This was computed on the basis that the entire amount of petitioner's salary income and the expenses attributable thereto were New Jersey income.

3. Petitioner claimed a credit on his New York resident return for the amount of the tax paid to New Jersey - \$1,631.30.

4a. The deficiency notice in issue reduces the credit for taxes paid to New Jersey from \$1,631.30 to \$1,088.89. This is done on the basis that the income attributable to New Jersey is only \$22,125.00 or three-fourths of the total \$29,500.00 salary.

4b. The deficiency notice also disallows certain business expenses in the amount of \$655.20 which for purposes of this hearing has been conceded. This was done both for the computation of New York income subject to tax and the computation of the New Jersey credit.

#### CONCLUSIONS OF LAW

The petitioner was not correct in his computation of the credit for New Jersey taxes. It is clear he overpaid the New Jersey tax and his remedy against double taxation is to demand


a refund in New Jersey. The New Jersey tax is overpaid because petitioner failed to allocate his salary income for that purpose. For such an allocation, in this kind of case, New Jersey uses rules exactly the same as New York (see CCH New Jersey State Tax Rep. ¶17-400; New York Regulation 20 NYCRR 131.15; 131.16). Under these rules, the allocation should be made by the number of days worked in and out of the State of New Jersey. Since this information is not available, an allocation can be approximated by the use of evidence of volume of business as was done in the deficiency notice in this case. In fact, the approximation in this case is unduly favorable to petitioner since it allows him to compute his New Jersey tax and the credit for the tax on the basis of business done not only in New Jersey but also in Pennsylvania and other states outside of New York.

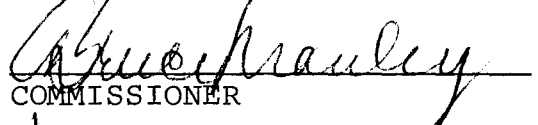
DECISION

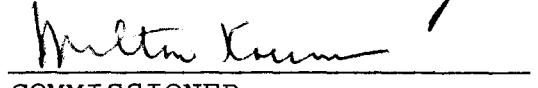
The deficiency as computed is correct and is due together with such interest as may be computed under section 684 of the Tax Law.

DATED: Albany, New York  
May 3, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER