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QUALITY
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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

E. WALN HARE & JEAN G. HARE

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) 1966, 1967 &
1968

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 14th day of March , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon E. Waln & Jean G.
Hare

(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. E. Waln Hare
Pheasant Hill Road
Princeton, New Jersey 08540

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

14th day of March , 1974.

J. S. Van Katten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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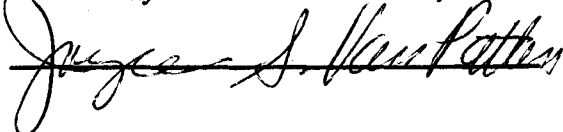
Martha Funaro, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of March, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Morton N. Molotsky,
C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Morton N. Molotsky, C.P.A.
A. R. Braveman & Company
One Palmer Square
Princeton, New Jersey 08540
and by depositing same enclosed in a postpaid properly addressed wrapper in a
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the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
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Sworn to before me this

14th day of March, 1974.







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

~~KOERNER, K. G. KOERNER~~
Mario A. Procaccino,
PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 14, 1974

Mr. & Mrs. E. Wain Mare
Pheasant Hill Road
Princeton, New Jersey 08540

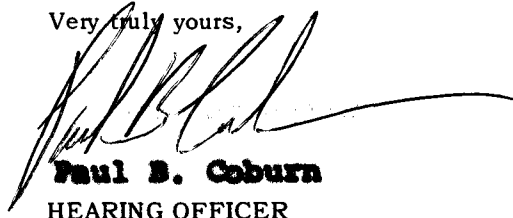
Dear Mr. & Mrs. Mare:

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

In the Matter of the Petition	:	
	:	
of	:	
	:	
E. WALN HARE and JEAN G. HARE	:	DECISION
	:	
for Redetermination of Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1966, 1967 and 1968.	:	
	:	

Petitioners, E. Waln Hare and Jean G. Hare, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1966, 1967 and 1968. (File Nos. 8-29180208 and 89179036). 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 August 15, 1973, at 1:15 P.M. Petitioners appeared by Morton N. Molotsky, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

What portion of the income received by petitioner, E. Waln Hare, from Channing Company, Inc., during the years 1966, 1967 and 1968 was allocable to New York State?

FINDINGS OF FACT

1. Petitioners, E. Waln Hare and Jean G. Hare, filed a New York State income tax nonresident return for the year 1966. They alleged on said return that petitioner, E. Waln Hare, received from Channing Company, Inc., for Federal income tax

purposes for said year the sum of \$75,188.25 and for New York State income tax purposes the sum of \$33,592.26. They further alleged that he was entitled to allocate the later sum based upon the number of days he worked within and without New York State during said year, resulting in New York State income of \$19,020.84. They claimed that he worked a total of 281 days during said year of which 117 were worked outside of New York State. They demanded a refund of \$1,332.80.

2. Petitioners, E. Waln Hare and Jean G. Hare, filed a New York State income tax nonresident return for the year, 1967. They alleged on said return that petitioner, E. Waln Hare, received from Channing Company, Inc., for Federal income tax purposes for said year the sum of \$102,292.31 and for New York State income tax purposes in the sum of \$29,705.21. They further alleged that he was entitled to allocate the latter sum based upon the number of days he worked within and without New York State during said year resulting in New York State income of \$17,493.40. They claimed that he worked a total of 270 days during said year of which 111 were worked outside of New York State. They demanded a refund of \$1,519.22.

3. Petitioners, E. Waln Hare and Jean G. Hare, filed a New York State income tax nonresident return for the year 1968. They alleged on said return that petitioner, E. Waln Hare, received from Channing Company, Inc., for Federal income tax purposes for said year the sum of \$187,952.55 and for New York

State income tax purposes the sum of \$48,157.65. They further alleged that he was entitled to allocate the latter sum based upon the number of days he worked within and without the State during said year resulting in New York State income of \$22,812.41. They claimed he worked a total of 278 days during said year of which 111 were worked outside of New York State. They demanded a refund of \$2,818.40.

4. On July 28, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, E. Waln Hare and Jean G. Hare, imposing additional personal income tax for the year 1966 in the sum of \$961.94 upon the grounds that the entire compensation of \$75,188.25 received from Channing Company, Inc., by petitioner, E. Waln Hare, was subject to allocation based upon the number of days worked within and without the State. It further disallowed as days worked during the year and days worked outside of New York State during the year 21 days during said year considered to be a European vacation. It also disallowed as days worked outside of New York State, 10 days worked at home in New Jersey during said year. This resulted in an allocation ratio of 260 days worked during said year of which 153 days were worked within New York State. The said Statement of Audit Changes also imposed additional personal income tax for the year 1967 in the sum of \$1,940.58 upon the grounds that the entire compensation of \$102,292.31 received from Channing Company, Inc., by petitioner, E. Waln Hare, for said year was subject to allocation based upon the number of days worked within and without New York State. It did not dispute the number of days set forth in the allocation ratio as alleged in the tax return. In accordance with the aforesaid Statement of Audit

Changes, it issued a Notice of Deficiency in the sum of \$3,184.11.

5. On May 25, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, E. Waln Hare and Jean G. Hare, imposing additional personal income tax for the year 1968 in the sum of \$8,010.79 upon the grounds that the entire compensation of \$187,952.55 received from Channing Company, Inc., by petitioner, E. Waln Hare, during said year was subject to allocation based upon the number of days worked within and without New York State during said year. It did not dispute the number of days set forth in the allocation ratio as alleged in their tax return for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$8,544.63.

6. Petitioners, E. Waln Hare and Jean G. Hare, were residents of the State of New Jersey during the years 1966, 1967 and 1968. They resided in a home located at Pheasant Hill Road, Princeton, New Jersey.

7. During the years 1966, 1967 and 1968, petitioner, E. Waln Hare, was National Vice President in charge of dealer sales for Channing Company, Inc. Channing Company, Inc., was the national distributor of seven Channing mutual funds. Distribution of these mutual funds by Channing Company, Inc., was made through investment or brokerage firms by wholesale sales representatives compensated by commissions on sales made in their assigned sales territories. These sales representatives were known as "regional wholesale vice presidents". Petitioner was responsible for the supervision

of the regional wholesale vice presidents throughout the United States and Europe. He received an override commission on their sales. Petitioner also acted as a wholesale representative in territories not covered by regional wholesalers. He received a commission at a stipulated rate on sales made in these territories. The essential nature of his duties was to encourage sales by personal visitation to dealers offices and to conduct sales meetings. The actual sales of the mutual funds were made by the investment or brokerage houses as dealers to their customers. The sales were not made directly by petitioner either in his supervisory capacity or in his capacity as a wholesale representative.

8. The main office of Channing Company, Inc., was located in Battle Creek, Michigan, during the years 1966, 1967 and 1968. It maintained a branch office at 280 Park Avenue, New York, New York. Petitioner, E. Waln Hare, was provided with an office at said premises which was the principal place from which he worked. He maintained a secretary at said premises and paid her salary. He bore all of his own expenses with the exception of the office space.

9. Petitioners, E. Waln and Jean G. Hare, failed to submit any documentary or other substantial evidence to prove that 21 days spent in Europe by petitioner, E. Waln Hare, during the year 1966 was in connection with his business activities and not a vacation.

10. Petitioners, E. Waln Hare and Jean Hare, failed to submit any documentary or other substantial evidence to prove that 10 days spent by petitioner in Princeton, New Jersey, during the year 1966

were not days spent working at his home for his own convenience.

11. Petitioner, E. Waln Hare, worked for his employer, Channing Company, Inc., a total of 260 days during the year 1966 of which 107 days were worked outside of New York State. He worked a total of 270 days during the year 1967 of which 111 days were worked outside of New York State. He worked a total of 278 days during the year 1968, of which 111 days were worked outside of New York State.

CONCLUSIONS OF LAW

A. That the compensation received by petitioner, E. Waln Hare, a nonresident of the State of New York, from his employer, Channing Company, Inc., during the years 1966, 1967, and 1968, did not depend directly upon the volume of business transacted by him and therefore he was not entitled to allocate this compensation based upon the volume of business transacted within and without New York State as provided for under 20 NYCRR 131.15. He was required to allocate all of the income received by him from Channing Company, Inc., based upon the formula for days worked within and without New York State as provided for under 20 NYCRR 131.16.

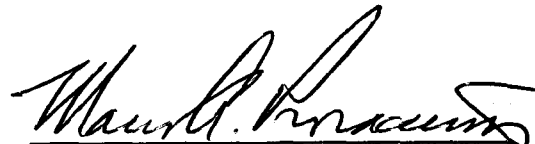
B. That the ten days worked at home in New Jersey during the year 1966 by petitioner, E. Waln Hare, were worked there by reason of his necessity and convenience and not for the necessity of his employer, and therefore, for purposes of allocation of salary income said days must be held to be days worked within New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.


C. That the 21 days spent in Europe by petitioner, E. Waln Hare, during the year 1966 were for purposes of a vacation and not business related and therefore for purposes of allocation of salary income said days cannot be considered days worked during said year 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 E. Waln Hare and Jean G. Hare is denied and the notices of deficiency issued July 28, 1969 and May 25, 1970, are sustained.

DATED: Albany, New York
March 14, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

MEMORANDUM

TO: Mr. Gabriel DiCerbo, Chief
Review Unit
Income Tax Bureau
Room 104, Building #8

DATE:

3/25/74


SOCIAL SECURITY NO.

FROM: Hearing Unit
Room 214A, Building #9

063- 01- 8771

RE: E. WALN HARE

Please advise as to the last known address for the above named taxpayer.


HEARING OFFICER

Taxpayer's last known address is:

Pheasant Hill Road
Princeton, New Jersey 08540
1972 return
Soellner 3-29-74

RECEIVED
NEW YORK STATE
INCOME TAX BUREAU
MAR 28 1974
HEARING UNIT
ADMINISTRATIVE OFFICE



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
Mario A. Procaccino,
~~XXXXXXXXXX~~, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

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

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 14, 1974

Mr. & Mrs. E. Waln Hare
Pheasant Hill Road
Princeton, New Jersey 08540

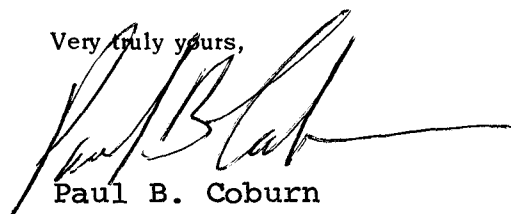
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Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

AD 32 (6-73) 250M

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227

063-01-8771

~~Mr. & Mrs. E. Waln Hare
Pheasant Hill Road
Princeton, New Jersey 08540~~

*Over 1 yr
Q2*

CERTIFIED

No. 253871

MAIL

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
E. WALN HARE and JEAN G. HARE
for Redetermination of Deficiency or
for Refund of Personal Income Taxes
under Article 22 of the Tax Law for
the Years 1966, 1967 and 1968.

DECISION

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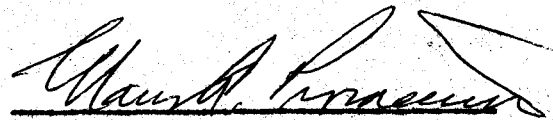
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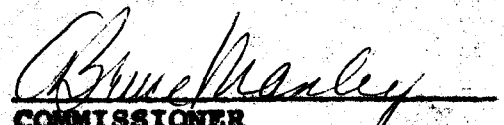
C. That the 21 days spent in Europe by petitioner, E. Wain Hare, during the year 1966 were for purposes of a vacation and not business related and therefore for purposes of allocation of salary income said days cannot be considered days worked during said year in accordance with the meaning and intent of section 682(c) of the Tax Law and 20 NYCRR 131.16.

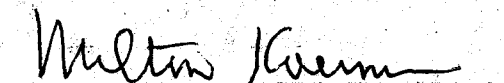
D. That the petition of E. Wain Hare and Jean G. Hare is denied and the notices of deficiency issued July 28, 1969 and May 25, 1970, are sustained.

DATED: Albany, New York
March 14, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER