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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ARTHUR W. KELLY & MARY V. KELLY
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) 1970

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 29th day of July , 19 74, she served the within Notice of Decision (or Determination) by (certified) mail upon Arthur W. & Mary V. Kelly (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. Arthur W. Kelly
12302 Huntingwick
Houston, Texas 77024

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

29th day of July , 1974

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR W. KELLY and MARY V. KELLY

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article (a) 22 of the
Tax Law for the Year (x) 1970

State of New York
County of Albany

Martha Funaro, being
she is an employee of the Department of T
age, and that on the 2nd day of July
Notice of Decision ~~(or Determination)~~ by
Mary V. Kelly ~~(representative)~~
proceeding, by enclosing a true copy the
wrapper addressed as follows:

Mr. & Mrs.
12302 Hu
Houston,

and by depositing same enclosed in a post
(post office or official depository) under
the United States Post Office Department

X That deponent further says that the
of petitioner herein and that the address
known address of the ~~representative of the~~

Sworn to before me this

2nd day of July, 1974

James A. Paul Patterson

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UNITED STATES POSTAL SERVICE

HOUSTON, TX 770
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24 JUL
1974

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JUL 9 1974
SECTION

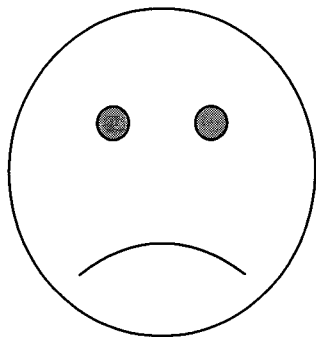
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STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12227

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CORRECTION FOLLOWS



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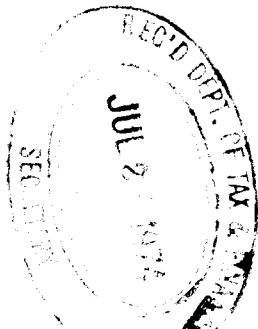
STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227



UNITED STATES POSTAL SERVICE

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REASON: Unclaimed Address

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Mr. & Mrs. Arthur W. Kelly
12302 Huntingwick
Houston, Texas

RETURNED TO SENDER

REASON: Unclaimed Address

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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR W. KELLY and MARY V. KELLY

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 (x) 22 of the
Tax Law for the Year (x) 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 ~~for Redetermination~~ by (certified) mail upon Arthur W. & Mary V. Kelly ~~(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. Arthur W. Kelly
12302 Huntingwick
Houston, Texas 77024

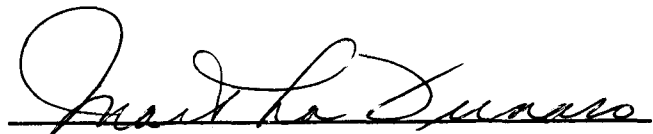
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That deponent further says that the said addressee is the ~~representative of~~ ~~of~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~representative of the~~ petitioner.

Sworn to before me this

2nd day of July, 1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

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

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated, Albany, New York
July 2, 1974

Mr. & Mrs. Arthur W. Kelly
12302 Huntingwick
Houston, Texas 77024

Dear Mr. & Mrs. Arthur W. Kelly:

Please take notice of the **Decision**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section (g) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **four 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,

L. Robert Leisner
L. ROBERT LEISNER
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ARTHUR W. KELLY and MARY V. KELLY : DECISION
for Redetermination of a Deficiency :
or for Refund of Personal Income :
Tax under Article 22 of the Tax Law :
for the Year 1970. :

Petitioners, Arthur W. Kelly and Mary V. Kelly, petitioned for a redetermination of deficiencies in personal income tax under Article 22 of the Tax Law for the year 1970.

The case was submitted for decision on information contained in the file.

ISSUE

What was the correct allocation for petitioner, Arthur W. Kelly's income for the year 1970?

FINDINGS OF FACT

1. Petitioners, Arthur W. Kelly and Mary V. Kelly, timely filed a New York State nonresident income tax return for the year 1970.
2. A Notice of Determination of deficiencies in personal income tax for the year 1970 was issued on May 21, 1973, against the taxpayers under File No. 0-53253886.
3. The taxpayers petitioned for redetermination of the deficiencies.

4. Petitioner, Arthur W. Kelly, was employed as a general manager by the Pullman Incorporated Company by whom he was required to work within and without New York State during the period January 1, 1970 through August 21, 1970, when his employment was terminated. He worked for the M.W. Kellogg Company in Houston, Texas, from August 22, 1970 to December 31, 1970. He was not required to work in New York State by the M.W. Kellogg Company.

5. Petitioner, Arthur W. Kelly, worked 138 days within New York State while employed by the Pullman Incorporated Company. In computing his tax due to New York State, he listed 249 total days worked in the year 1970.

6. Petitioner, Arthur W. Kelly, did not include as income on his New York return, amounts received from the M.W. Kellogg Company.

7. On May 21, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Arthur W. Kelly and Mary V. Kelly, disallowing the allocation of 249 days as total days worked in the year 1970, upon the grounds that income for services performed entirely outside New York State for M.W. Kellogg is not subject to allocation. The aforesaid Statement of Audit Changes listed 159 days worked in the period upon which petitioner, Arthur W. Kelly's allocation was to be based.

CONCLUSIONS OF LAW

A. That, for purposes of allocation of income for the year 1970, petitioner, Arthur W. Kelly, worked a total of 159 days of which 138 days are considered 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 petition of Arthur W. Kelly and Mary V. Kelly is in all respects denied, and the Notice of Deficiency issued May 21, 1973, is sustained.

DATED: Albany, New York
July 2, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER