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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ROBERT H. KINDERMAN and LORAIN E. KINDERMAN

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) 1969.

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 25th day of June, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon ROBERT H. KINDERMAN and
LORAIN E. KINDERMAN (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Robert H. Kinderman
14235 Cameo Drive
Sun City, Arizona 85351
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

25th day of June, 1974

James S. MacPatterson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT H. KINDERMAN and LORAIN E. KINDERMAN

AFFIDAVIT OF MAILING
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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.

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 25th day of June, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon STEPHEN S. CASE,
TRUST OFFICER
(representative of) the petitioner in the within

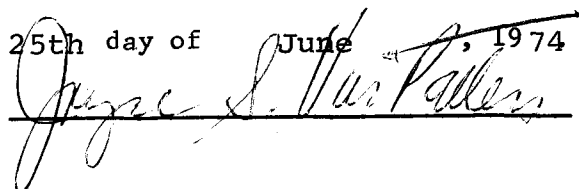
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:
Stephen S. Case, Trust Officer
Trust Division
First National Bank Plaza
P.O. Box 2669
Phoenix, Arizona 85002

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

25th day of June, 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
June 25, 1974

Mr. and Mrs. Robert H. Kinderman
14235 Cameo Drive
Sun City, Arizona 85351

Dear Mr. and Mrs. Kinderman:

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

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT H. KINDERMAN and LORAIN E. KINDERMAN	:	DECISION
for a Redetermination of Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1969.	:	

Petitioners, Robert H. Kinderman and Loraine E. Kinderman, 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. 9-33030081).

A calendar call was scheduled before Hon. A. Bruce Manley, State Tax Commissioner, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, for February 26, 1974 at 3:00 P.M. On April 30, 1974, petitioners' representative, Stephen S. Case, advised the State Tax Commission, in writing, that petitioners waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record:

ISSUE

Were 29 Saturdays and Sundays and 23 weekdays alleged to have been worked outside of New York State by petitioner, Robert H. Kinderman, allocable as days worked within or days worked without New York State?

FINDINGS OF FACT

1. Petitioners, Robert H. Kinderman and Loraine E. Kinderman, filed a New York State income tax nonresident return for the year 1969. They allocated the income received by him from his employer, Allied Chemical Corporation, based upon the number of alleged days he worked within and without New York State during said year. They claimed that he worked 256 days during said year of which 52 days were worked outside of New York State. They claimed a refund of \$2,677.00.

2. On April 13, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Robert H. Kinderman and Loraine E. Kinderman, imposing additional personal income tax for the year 1969 in the sum of \$1,153.34 upon the grounds that he worked a total of 227 days during said year of which 219 were considered worked in New York State. There were also certain other adjustments which are not being contested by them. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,785.38.

3. Petitioners, Robert H. Kinderman and Loraine E. Kinderman, were residents of the State of New Jersey during the year 1969. They resided at 6 Reed Road, Morristown, New Jersey.

4. Petitioner, Robert H. Kinderman, was employed by Allied Chemical Corporation as a vice-president during the year 1969. His responsibilities included accounting functions, data processing functions and office and building operations.

5. Petitioner, Robert H. Kinderman, worked 29 Saturdays and Sundays at home during the year 1969. This was more convenient since there was not enough time during the normal business day and since it eliminated a three-hour round trip to his New York City office. He worked 8 weekdays at out-of-state company facilities during the year 1969. He worked a total of 227 days during said year of which 29 were Saturdays and Sundays worked at home in New Jersey and of which 8 were weekdays worked outside of New York, but not at his home.

CONCLUSIONS OF LAW

A. That the 29 Saturdays and Sundays worked at home in New Jersey during the year 1969 by petitioner, Robert H. Kinderman, were worked there by reason of his necessity and convenience and not for the necessity of his employer, and, therefore, for purposes of allocation said days cannot be included by him in computing total days worked in a year or total days worked outside of New York State in a year, in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

B. That petitioner, Robert H. Kinderman, failed to prove that he spent more than 8 days working at his employer's facilities out-of-state during the year 1969 since he did not submit documentary or other satisfactory evidence to support his claim that he spent an additional 15 days at said locations.

C. That, therefore, for purposes of allocation of salary income for the year 1969, petitioner, Robert H. Kinderman, worked a total of 227 days of which 219 days are considered to be days worked in New York State.


D. That petitioners, Robert H. Kinderman and Loraine E. Kinderman, were afforded proper administrative due process by the Income Tax Bureau.

E. That the petition of Robert H. Kinderman and Loraine E. Kinderman is denied and the Notice of Deficiency issued April 13, 1973, is sustained.

DATED: Albany, New York
June 25, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER