

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ROBERT E. KOSINSKI
and
THERESA H. KOSINSKI
For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(9)~~ 22 of the
Tax Law for the Year ~~(1964)~~ 1965

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

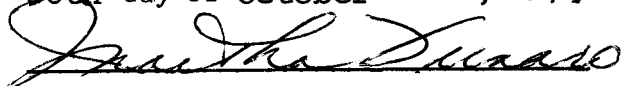
State of New York
County of Albany

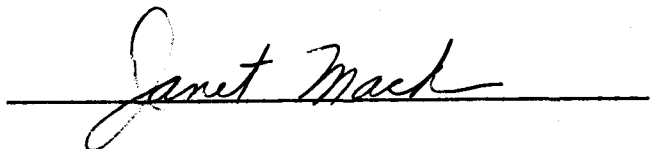
Janet Mack, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of October, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Robert E. Kosinski and Theresa H. Kosinski ~~(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. Robert E. Kosinski
6 Ronald Drive
Clifton, New Jersey
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)~~ ~~the~~ 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

30th day of October, 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
October 30, 1974

Mr. & Mrs. Robert E. Kosinski
6 Ronald Drive
Clifton, New Jersey

Dear Mr. & Mrs. Kosinski:

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 E. KOSINSKI	:	
and	:	DECISION
THERESA H. KOSINSKI	:	
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1965.	:	

Petitioners, Robert E. Kosinski and Theresa H. Kosinski, 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 1965. (File No. 89758657). 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 January 14, 1974, at 3:00 P.M. Petitioner, Robert E. Kosinski, appeared pro se and for his wife petitioner, Theresa H. Kosinski. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUES

I. What portion of the salary income received by petitioner, Robert E. Kosinski, from his employer, Berly, Townsend, Watson & Churchill, Esqs., during the year 1965, was allocable to New York State?

II. Did petitioners, Robert E. Kosinski and Theresa H. Kosinski, substantiate deductions for automobile damage, storm damage to their home and professional business expenses during the year 1965?

FINDINGS OF FACT

1. Petitioners, Robert E. Kosinski and Theresa H. Kosinski, filed a New York State income tax nonresident return for 1965. The return was filed on January 6, 1969. They allocated income

received by petitioner, Robert E. Kosinski, from Berly, Townsend, Watson & Churchill, Esqs., based upon the number of alleged days he worked within and without New York State during said year. They claimed he worked 220 days during said year of which 120 days were worked outside of New York State. They claimed a refund of \$784.00. New York State income tax in the sum of \$991.81 was withheld from his salary by his employer during said year.

2. On May 25, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Robert E. Kosinski and Theresa H. Kosinski, disallowing the allocation of 120 days as days worked outside of New York State during the year 1965, upon the grounds that such allocation was unsubstantiated. Other itemized deductions were disallowed as being unsubstantiated. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$403.49.

3. Petitioners, Robert E. Kosinski and Theresa H. Kosinski, were residents of the State of New Jersey during the year 1965.

4. Petitioner, Robert E. Kosinski, was an attorney and was employed by the firm of Berly, Townsend, Watson & Churchill, Esqs., at 165 Broadway, New York City during the year 1965. He frequently had to work on patent cases outside of New York State. He worked 46 days during said year outside of the State of New York and not at his home in New Jersey.

5. Petitioner, Robert E. Kosinski, worked 21 days at home in New Jersey during the year 1965. It was more convenient for him to prepare briefs and do other legal work there since he did not have enough time during the normal business day and since at times, illness and inclement weather kept him at home.

6. Petitioners, Robert E. Kosinski and Theresa H. Kosinski, claimed deductions for an automobile accident, storm damage to

their home, and professional expenses. They did not have records to substantiate either the storm damage or the professional expenses. He did not have a record of reimbursement by his insurance company for automobile damage. Part of the deduction claimed for automobile damage was for damage subsequent to reimbursement by the insurance company. There was no proof that this later damage was related to the 1965 accident.

CONCLUSIONS OF LAW

A. That the 46 days worked by petitioner, Robert E. Kosinski, during the year 1965, outside of New York State and not at his home in New Jersey, were worked there for the necessity of his employer and therefore, for purposes of allocation of salary income, such days were properly considered days worked outside of 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 21 days worked at home by petitioner, Robert E. Kosinski, during the year 1965, 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 petitioners, Robert E. Kosinski and Theresa H. Kosinski, did not offer documentary or other substantial evidence to substantiate deductions for storm loss, automobile damage and professional business expenses for the year 1965.

D. That the petition of Robert E. Kosinski and Theresa H. Kosinski is granted to the extent of cancelling the Notice of Deficiency issued May 25, 1970, and granting a refund for the

- 4 -

year 1965 in the sum of \$192.11 together with such interest as may be lawfully due and that, except as so granted, the petition is in all other respects denied.

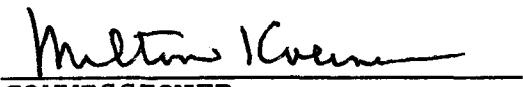
DATED: Albany, New York

October 30, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER