

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SANDRA L. SHERWOOD

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

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 8th day of March , 19 74, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Sandra L. Sherwood

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

wrapper addressed as follows: Miss Sandra L. Sherwood  
Box 602, Sanicaty Road  
Siasconset, Massachusetts 02564

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

8th day of March , 1974.

Jay S. Van Patten

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
Mario A. Procaccino,  
~~XXXXXXXXXXXX~~ 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 8, 1974

Miss Sandra L. Sherwood  
Box 602, Sanicaty Road  
Siasconset, Massachusetts 02564

Dear Miss Sherwood:

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,

**EDWARD ROOK,**  
~~XXXXXXXXXXXX~~  
**Secretary, State Tax  
Commission**

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
SANDRA L. SHERWOOD :  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for :  
the Year 1969. :  
: DECISION

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Petitioner, Sandra L. Sherwood, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the year 1969. (The case was submitted for decision on information contained in the file.)

ISSUE

Was the allowance, claimed by the nonresident taxpayer for days worked outside of New York State based upon the performance of services which of necessity, as distinguished from convenience, obligated the taxpayer to out-of-state duties in the service of her employer?

FINDINGS OF FACT

1. Petitioner, Sandra L. Sherwood, timely filed a New York State income tax return for the year 1969.
2. A Notice of Determination of deficiencies in personal income tax for the year 1969 was issued on July 31, 1972, against the taxpayer under File No. 9-33136026. The Income Tax Bureau contended that time spent at the taxpayer's home outside the

State of New York was not a proper basis for allocation of salary income to outside New York State.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. The taxpayer was the editor of all Lehman College Bulletins and required a private office to do her job. She had to work at her home which was out-of-state as no such office space was available at the Bronx, New York location of the college because of expansion and building of college facilities. An employer's letter from the Dean of the Lehman College corroborated her statement, that due to lack of space, she was required to work at her home.

#### CONCLUSIONS OF LAW

A. The Income Tax Regulations state that "any allowance claimed for days worked outside of the State must be based upon the performance of services which of necessity, as distinguished from convenience, obligate the employee to out-of-state duties in the service of his employer". NYCRR 131.16. Days worked at home outside of the State for reasons of personal health and convenience, and not for the necessity of the employer, must be held to be days worked within the State. Matter of Churchill v. Gallman, 38 AD 2d 631 (1971); Burke v. Bragliani, 10 AD 2d 654.


B. The taxpayer worked outside New York State, at her home, for her personal convenience. Matter of Churchill v. Gallman; Burke v. Bragliani, 10 AD 2d 654.

C. Pursuant to NYCRR 131.16, the taxpayer's petition is denied. The deficiencies against petitioner in income tax for the year 1969 are sustained.

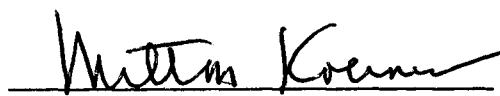
DATED: Albany, New York

March 8, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER