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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM C. THOMAS, JR.

and MELBA J. THOMAS

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) 1965 & 1967. :

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 23rd day of April, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon WILLIAM C. THOMAS, JR.
and

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

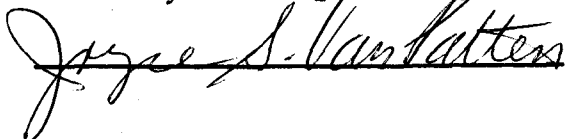
wrapper addressed as follows: Mr. & Mrs. William C. Thomas, Jr.
75 South Highwood Avenue
Glen Rock, New Jersey

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) 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

23rd day of April 1974


Joseph S. Van Latten


Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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WILLIAM C. THOMAS, JR.
and MELBA J. THOMAS

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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 23rd day of April, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon ALAN E. KAHN, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Alan E. Kahn, Esq.
299 Broadway
New York, New York 10007

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

23rd day of April, 1974

James J. Van Latten

Martha Funaro



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
Mario A. Procaccino
NORMAN E. KULMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 23, 1974

Mr. & Mrs. William C. Thomas, Jr.
75 South Highwood Avenue
Glen Rock, New Jersey

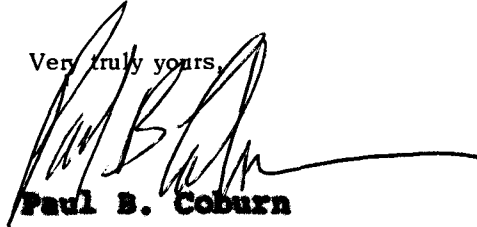
Dear Mr. & Mrs. Thomas:

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

Please take further notice that pursuant to **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 Petitions | : | |
| of | : | |
| WILLIAM C. THOMAS, JR., | : | |
| and MELBA J. THOMAS | : | DECISION |
| for Redetermination of Deficiency or | : | |
| for Refund of Personal Income Tax | : | |
| under Article 22 of the Tax Law for | : | |
| the Years 1965 and 1967. | : | |

Petitioners, William C. Thomas, Jr., and Melba J. Thomas, have filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1965 and 1967. (File Nos. 49179727 and 89183242). 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 December 19, 1973, at 1:15 P.M. Petitioners appeared by Alan E. Kahn, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

What portion of the salary income received by petitioner, William C. Thomas, Jr., during the years 1965 and 1967 was allocable to New York State?

FINDINGS OF FACT

1. Petitioners, William C. Thomas, Jr., and Melba J. Thomas, filed a New York State combined nonresident income tax return for the year 1965. They allocated salary income in the sum of \$16,783.00 received by petitioner, William C. Thomas, Jr., based upon the number of days he alleged to have worked within and without New York State during said year. They claimed that he

worked a total of 280 days during said year of which 93 days were worked outside of New York State. They demanded a refund of \$327.00.

2. Petitioners, William C. Thomas, Jr., and Melba J. Thomas, filed a New York State combined nonresident income tax return for the year 1967. They allocated salary income in the sum of \$13,300.02 received by petitioner, William C. Thomas, Jr., based upon the number of days he alleged to have worked within and without New York State during said year. They claimed that he worked a total of 272 days during said year of which 32 days were worked outside of New York State. They demanded a refund of \$184.19.

3. On January 22, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, William C. Thomas, Jr., and Melba J. Thomas, imposing additional personal income tax for the year 1965 in the sum of \$275.89 upon the grounds that all of petitioner, William C. Thomas, Jr.'s salary income for said year was subject to New York State personal income tax, since days worked at home were not recognized as a basis for allocation of salary income. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$305.18.

4. On October 21, 1968, the Income Tax Bureau issued a Statement of Refund Adjustment to petitioners, William C. Thomas, Jr., and Melba J. Thomas, granting them a refund of personal income tax in the sum of \$109.70 for the year 1967 instead of the sum of \$184.19 as demanded in their personal income tax return for said year, upon the grounds that 31 days worked at home by petitioner, William C. Thomas, Jr., during said year were not recognized as a basis for allocation of salary income.

5. Petitioners, William C. Thomas, Jr., and Melba J. Thomas, were residents of the State of New Jersey during the years 1965 and 1967, residing at 75 South Highwood Avenue, Glen Rock, New Jersey.

6. Petitioner, William C. Thomas, Jr., was employed by Columbia University School of Public Health and Administrative Medicine as an assistant professor during the years 1965 and 1967. He specialized in political science and public administration in the field of public health. He taught two classes a semester, served on faculty committees, did research in his field and worked on writing a book as part of his duties during said years. He was provided with an office at the campus of Columbia University.

7. During the year 1965, petitioner also taught one course at the New School for Social Research for which he received a salary of \$225.00 and served on the Governor's Committee for Hospital Costs for which he received a salary of \$5,400.00 from the State of New York. He was not provided with an office by the New School for Social Research. The Governor's Committee for Hospital Costs maintained a small office in an apartment house at 125th Street and Riverside Drive in New York City. These two activities were adjuncts to his activities as an assistant professor at Columbia University.

8. Petitioner, William C. Thomas, Jr., maintained research materials in his home in New Jersey. During the years 1965 and 1967, he prepared for classes, carried on research and worked on his book at home. It was more convenient for him to perform this work at home since he was not interrupted by telephone calls, students and other distractions.

9. Petitioner, William C. Thomas, Jr., during the year 1965, worked a total of 280 days of which 90 days were worked at his

home in New Jersey and three days were worked outside of New York State, but not at his home. During the year 1967, he worked a total of 272 days of which 29 days were worked at his home in New Jersey and three days were worked outside of New York State, but not at his home.

CONCLUSIONS OF LAW

A. That the 90 days worked at home during the year 1965 and the 29 days worked at home during the year 1967 by petitioner, William C. Thomas, Jr., were worked there by reason of his necessity and convenience and not for the necessity of his employers and, therefore, for purposes of allocation of salary income, said days cannot be included by him in computing total days worked outside of New York State during said years in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

B. That the three days worked outside of New York State and not at home during each of the years 1965 and 1967 by petitioner, William C. Thomas, Jr., for purposes of allocation of salary income, may be allocated as 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.


C. That, therefore, petitioner, William C. Thomas, Jr., for purposes of allocation of salary income for the year 1965, worked a total of 280 days of which 277 are considered to be days worked within New York State and for the year 1967 worked a total of 272 days of which 269 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.

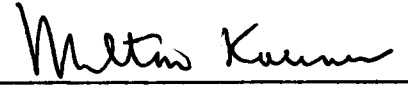
D. That, the petitions of William C. Thomas, Jr., and Melba J. Thomas, are granted to the extent of reducing additional personal income tax due for the year 1965 from \$275.89 to \$265.95 together with such interest as may be lawfully due and of increasing the amount of personal income tax refund payable for the year 1967 from \$109.70 to \$115.26, together with such interest as may be lawfully payable; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued January 22, 1968, and the Statement of Refund Adjustment issued October 21, 1968, and, that except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York
April 23, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER