

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALVIN L. and RITA M. BOOKE

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) 1969

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 21st day of May , 1975 , she served the within

Notice of Decision (or Determination) by (certified) mail upon Alvin L. and  
Rita M. Booke (~~XXXXXXXXXXXX~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

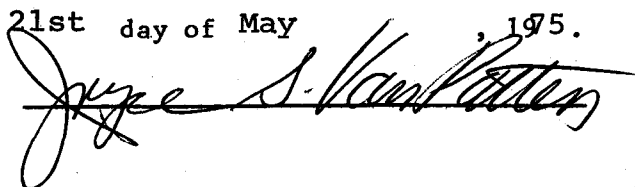
wrapper addressed as follows: Mr. & Mrs. Alvin L. Booke  
29 Bosko Drive  
East Brunswick, New Jersey 08816

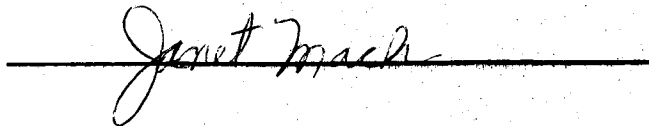
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

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

Sworn to before me this

21st day of May , 1975.







STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
~~XXXXXXXXXXXXXXXXXXXX~~  
James H. Tully, Jr.  
~~XXXXXXXXXXXXXXXXXXXX~~ PRESIDENT

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

AREA CODE 518

A. BRUCE MANLEY  
MILTON KOERNER

ADDRESS YOUR REPLY TO

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

**DATED:** Albany, New York  
**May 21, 1975**

**Mr. & Mrs. Alvin L. Booke**  
**29 Bosko Drive**  
**East Brunswick, New Jersey 08816**

**Dear Mr. & Mrs. Booke:**

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

Please take further notice that pursuant to  
Section (3) **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,

**Nigel G. Wright**  
HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~  
Taxpayer's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ALVIN L. and RITA M. BOOKE :  
for a 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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Alvin L. and Rita M. Booke, 29 Bosko Drive, East Brunswick, New Jersey 08816, filed a petition under section 689 of the Tax Law for a refund of personal income taxes paid under Article 22 of the Tax Law for the year 1969.

The claimed refund was in the amount of \$382.89 and was allowed only to the extent of \$77.74.

A hearing was duly held on September 13, 1974, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioners appeared but were not represented. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Alexander Weiss, Esq.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the work done by a non-resident

at his home can be considered as out-of-state work for purposes of allocating his salary income.

FINDINGS OF FACT

1. Mr. Booke, since February, 1969, has been a resident of East Brunswick, New Jersey.

2. Mr. Booke, since 1964, has been a full time lecturer in business management at the Baruch College of the City University of New York. The school was located at 17 Lexington Avenue, New York, New York, at the corner of 23rd Street.

3. Mr. Booke taught five courses in 1969 which entailed fifteen hours of classroom instruction each week. Some courses were given in the morning and some at night. They were given on four of the weekdays but he was required to be on the college premises on the fifth day to counsel students. Such counseling required at least twenty hours a week. Mr. Booke was required to do research to prepare his lectures and to grade exam papers. In addition, he had to do research and write papers on curriculum design and development for use by the college for a proposed new course in hospital administration and for a general restructuring of the curriculum.

4. During 1969, because of a severe space shortage at the college, Mr. Booke had to share a single desk with three other teachers in a room ten feet by ten feet in dimension with two

other desks shared by eight other teachers. In addition, there was constant noise from construction work in adjoining areas. This office was on the ninth floor of the 23rd Street building. The building was normally closed on weekends. Under normal conditions, Mr. Booke would have been entitled to, and he did have both prior to 1969 and subsequently, the exclusive use of one desk in a room with only two other teachers and with space enough for private conferences with students. The overcrowding was caused by the fact that around 1968 the City University had adopted a policy of open enrollment, causing a large expansion in the student enrollment and the teaching faculty. The Baruch College expanded its facilities into nearby buildings but still did not have enough space. Office space in particular was at a premium. Only department chairmen had private offices; senior professors had to share offices and part-time faculty had no space at all.

5. Mr. Booke was required to do extensive research at libraries both in New York and elsewhere including the Rutgers University Library about twenty minutes from his home. He would typically gather material in the library and take it to his home for reading. Mr. Booke graded examination papers and prepared for his lectures at his home in New Jersey. There is no dispute as to the amount of time Mr. Booke worked at his New Jersey home. He did this work both on evenings and on weekends as well as during regular working hours.

6. Mr. Booke's New Jersey home is a four-bedroom house with one bedroom used exclusively as an office with a desk, file cabinets and shelves. He keeps over five hundred books there. Mr. Booke's home is about fifty miles from the college. He commutes by car, bus and subway. This takes about one and a half hours each way.

CONCLUSIONS OF LAW

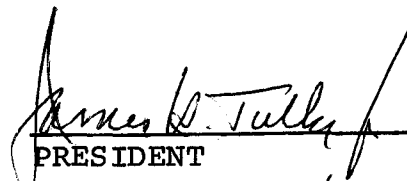
The petitioner's work outside of New York State was performed outside of New York for his own convenience and not of necessity for the service of his employer. (See Speno v. Gallman, 34 N.Y. 2d)

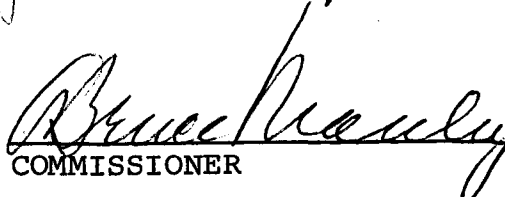
The refund is denied.

DATED: Albany, New York

May 21, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER