

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT P. and PATRICIA A. BOHN

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (X) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1969 and 1970.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor , 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 December , 1976, ~~she~~ served the within
Notice of Decision by (certified) mail upon Robert P. and
Patricia A. Bohn ~~(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 P. Bohn
39 Hiawatha Drive
Guilderland, New York 12084
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~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

21st day of December , 1976.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

December 21, 1976

TELEPHONE: (518) **457-3850**

Mr. & Mrs. Robert P. Bohn
39 Hiawatha Drive
Guilderland, New York 12084

Dear Mr. & Mrs. Bohn:

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

Please take further notice that pursuant to
Section(x) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~Revised and Resubmitted~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT P. and PATRICIA A. BOHN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Years	:	
1969 and 1970.	:	

Petitioners, Robert P. and Patricia A. Bohn, 39 Hiawatha Drive, Guilderland, New York 12084, filed petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1969 and 1970. (File No. 0-53055283).

A small claims hearing was held July 28, 1976 at 1:15 P.M. at the offices of the State Tax Commission, Room 107, Building #9, State Campus, Albany, New York, before Harry Huebsch, Hearing Officer. Petitioner, Robert P. Bohn, appeared pro se and for his wife. The Income Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq., of counsel).

ISSUE

Were days worked at home by a nonresident properly allocated as income earned from without New York State sources.

FINDINGS OF FACT

1. Petitioners, Robert P. and Patricia A. Bohn, timely filed 1969 and 1970 nonresident income tax returns. Patricia A. Bohn had no income. Robert A. Bohn allocated his income as to days worked in and out of New York for both years and included days worked at home in New Jersey with income earned outside of New York State. The Income Tax Bureau held that the days worked at home resulted in

income from New York sources and issued a Notice of Deficiency dated January 28, 1974 in the amount of \$295.99 additional tax plus \$52.43 interest for a total amount due of \$348.42.

2. Petitioner, Robert P. Bohn, was consecutively employed by four companies in 1969 and 1970. All of these employers were located in New York. He was paid on a salary basis and provided with office space. His employers' clients were located throughout the United States, and petitioner, Robert P. Bohn, would visit these clients at their offices. He would also work at home. Petitioner, Robert P. Bohn, had informal agreements with his employers that he was permitted to work at home.

3. Petitioner, Robert P. Bohn, contended that a portion of the work performed at home was for clients located outside of the State of New York and, therefore, the income was from non-New York sources. In support of his petition, he cited the matter of Milton B. and Elizabeth E. Freudenheim (New York State Tax Commission June 12, 1968). In the Freudenheim case, the petitioner was a nonresident working for an out-of-state employer, who had no office in New York. The employer assigned Mr. Freudenheim to Africa and, upon his return, petitioner spent some time writing about the overseas assignment at his out-of-state home. The State Tax Commission ruled that eleven days worked at home were worked for non-New York source income and allocable as out-of-state income.

CONCLUSIONS OF LAW

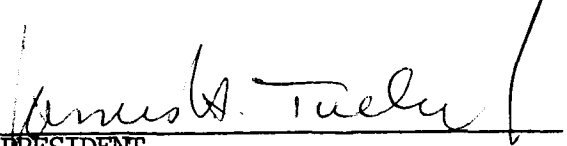
A. That days worked at home in New Jersey by petitioner, Robert P. Bohn, during the years 1969 and 1970 were worked there by reason of his own necessity and convenience and not for the necessity of his employers and should not be considered days worked outside of New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and of 20NYCRR 131.16.

B. That the fact that petitioner, Robert P. Bohn's employer had out-of-state clients has no relevancy in this case because petitioner's source of income was from his New York employer and not the employers' clients. The Freudenheim case was not similar to this instant case in that the employer was an out-of-state employer with no office in New York.

C. That the petition of Robert P. and Patricia A. Bohn is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York
December 21, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER