

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ASA S. and THELMA C. BUSHNELL

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)~~ 1970

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 3rd day of February, 1976, she served the within
Notice of Decision ~~XXXXXXXXXXXXXXXX~~ by (certified) mail upon Asa S. and Thelma C.

Bushnell ~~(XXXXXXXXXXXX)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Asa S. Bushnell
6 Mercer Street
Princeton, New Jersey 08540

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

3rd day of February, 1976.

Mary Groff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ASA S. and THELMA C. BUSHNELL

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 ~~(s)~~ 22 of the
Tax Law for the Year ~~(s)~~ 1970

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 3rd day of February, 1976, she served the within Notice of Decision (~~on Redetermination~~) by (certified) mail upon William L. Rothenberg, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: William L. Rothenberg, Esq.

330 Sunrise Highway
Rockville Centre, New York 11570

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

3rd day of February, 1976.

Mary Gruff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
February 3, 1976

Mr. & Mrs. Asa S. Bushnell
6 Mercer Street
Princeton, New Jersey 08540

Dear Mr. & Mrs. Bushnell:

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 GREENBERG
XXXXXXXXXXXXXXXXXXXX
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ASA S. and THELMA C. BUSHNELL : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1970. :

Petitioners, Asa S. and Thelma C. Bushnell, 6 Mercer Street, Princeton, New Jersey 08540, 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 1970. (File No. 0-53277212).

The petitioners waived in writing a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Was income earned by petitioner, Asa S. Bushnell, while working at his home properly allocated to non-New York State sources?

FINDINGS OF FACT

1. The petitioners, Asa S. and Thelma C. Bushnell, timely filed a New York State income tax nonresident return for the year 1970.
2. On November 26, 1973, a Statement of Audit Changes was issued against the petitioners which asserted that an improper allocation of income to non-New York State sources had occurred based on work performed at the petitioners' home. A Notice of Deficiency was issued in the sum of \$4,167.63.
3. The petitioners, Asa S. and Thelma C. Bushnell, were residents of New Jersey. During the year in question petitioner, Asa S. Bushnell, served as Television Program Director for the National Collegiate Athletic Association (NCAA). The NCAA maintains its main office at 1221 Baltimore Street, Kansas City, Missouri 64105. The NCAA also maintains an office at 420 Lexington Avenue, New York, New York, under the name, "National Collegiate Services" where Mr. Bushnell could have discharged his duties. The 1970 Wage and Tax Statement prepared by the NCAA for Mr. Bushnell stated his place of employment to be New York State.
4. From January 1, 1970, until June 30, 1970, petitioner, Asa S. Bushnell, acted as Commissioner of the Eastern College Athletic Conference (ECAC) whose offices are located at the Royal Manhattan Hotel, 44th Street and 8th Avenue, New York, New York. During this

period, health problems forced the petitioner to curtail activities at his New York office as he worked exclusively from an office located in his home.

5. On July 1, 1970, George Shiebler replaced petitioner, Asa S. Bushnell, as Commissioner of the ECAC. By resolution of the Executive Counsel of the ECAC dated February 23, 1970, Mr. Bushnell was named Consultant to the Commissioner and the Executive Council effective July 1, 1970. The ECAC did not require Mr. Bushnell's physical presence in New York in discharge of his duties. No office space or secretarial help was provided by the ECAC. Mr. Bushnell provided advice and direction on policy matters by telephone. Mr. Bushnell served in this capacity from July 1, 1970 through December 31, 1970.

CONCLUSIONS OF LAW

A. That, income earned for work performed by petitioner, Asa S. Bushnell, in his capacity as Consultant to the Commissioner and Executive Counsel of the ECAC at his home was properly allocated as non-New York State income. (Matter of Duncan R. Linsley v. Gallman, 38 AD 2d 367, 329 NYS 2d 486).

B. That, income earned through work performed at home in petitioner, Asa S. Bushnell's capacity as Commissioner of the ECAC and as Television Program Director of the NCAA must be allocated to

New York State. Workdays at petitioner's home required by reason of Mr. Bushnell's physical condition are deemed required for the employee's convenience rather than for the employer's necessity. Income earned from these workdays at home must be allocated to New York. (Matter of Churchill v. Gallman, 326 NYS 2d 917). The petitioners failed to prove that other workdays spent in the petitioner's home were required by employer necessity. Such days must be deemed spent at home for Mr. Bushnell's convenience. Income derived from those workdays must be deemed New York income (20 NYCRR 131.16).

C. That, the petition is granted as to the cancellation of additional tax liability and interest emanating from income earned from workdays spent at petitioner's home in Mr. Bushnell's capacity as consultant. The petition is denied as regards additional tax and interest assessed on income earned during workdays at home while Mr. Bushnell worked as Commissioner of the ECAC and as Television Program Director of the NCAA. The Notice of Deficiency is recomputed to be in the amount of \$1,268.45 additional tax plus the interest thereon.

DATED: Albany, New York
February 3, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER