

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THEODORE E. and ROSALINE DAVIS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) or Period(s) :  
1970, 1971 and 1972.

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 Theodore E. and  
Rosaline Davis (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. and Mrs. Theodore E. Davis  
624 Fern Street  
Westwood, New Jersey 07675  
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 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. and Mrs. Theodore E. Davis  
624 Fern Street  
Westwood, New Jersey 07675

Dear Mr. and Mrs. Davis:

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.

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  
Supervisor of Small  
Claims Hearings

Enc.

cc: ~~Petitioner's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
THEODORE E. and ROSALINE DAVIS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1970, 1971 and 1972.	:	

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Petitioners, Theodore E. and Rosaline Davis, residing at 624 Fern Street, Westwood, New Jersey 07675, have filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970, 1971 and 1972. (File No. 2-29183556 (1972)).

A small claims hearing was held before Joseph Marcus, Hearing Officer, on August 19, 1976, at 10:45 A.M., at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se and for his wife, petitioner, Rosaline Davis. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

ISSUE

Can a nonresident taxpayer count holidays, sick days and vacation days as days worked outside New York State for purposes of allocation of wages to New York State for the years in question?

FINDINGS OF FACT

1. Petitioner, Theodore E. Davis, was employed by the United States Treasury Department, Internal Revenue Service, Regional Counsel's Office, for the years 1970, 1971 and 1972, and filed nonresident New York State income tax returns for such years. Petitioner made claims for refund for the years 1970 and 1971 (File No. 1-73218944), for part of the personal income taxes paid. For the year 1972, the Income Tax Bureau has issued a Statement of Audit Changes and a Notice of Deficiency relative thereto. The issue is the same in all three years. The Income Tax Bureau did not allow the taxpayer to count holidays, sick days and vacation days as days worked outside New York State in determining the wages allocable to New York State.

2. The petitioner was paid for the holidays, sick days and vacation days for the years in question, and he was not within New York State on any of such days. Accordingly, the petitioner contends that 20 NYCRR 131.16 is unconstitutional in not permitting such days to be counted as days worked outside New York State for purposes of allocation of wages.

3. By agreement between the Income Tax Bureau and the petitioner, no other issue is in dispute; the facts are not in dispute.

CONCLUSIONS OF LAW

A. That the petitioner is not permitted to count holidays, sick days and vacation days for the years in question as days worked outside New York State for purposes of allocation of income within the meaning and intent of 20 NYCRR 131.16.

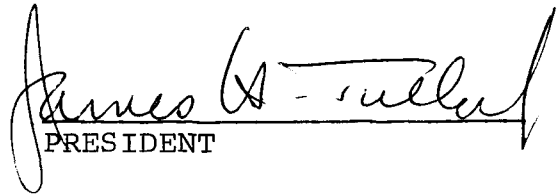
B. That the constitutionality of the laws and regulations of the State of New York are presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws or regulations unconstitutional. Therefore, it must be presumed sections 631 and 632 of the Tax Law and section 131.16 of the New York State personal income tax regulations are constitutional to the extent that they relate to the allocation of the petitioner's wages to New York State in determining the correct income tax liability for the years in question.

C. That the Notice of Deficiency dated March 31, 1975, for the year 1972, is sustained and petition for redetermination is denied.

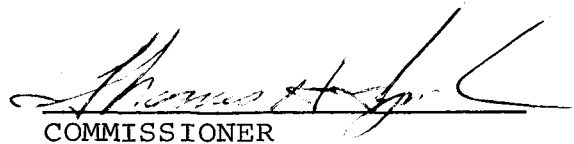
D. That the petitioner's claim for refund for the years 1970 and 1971 (File No. 73218944), is denied.

DATED: Albany, New York  
December 21, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER