

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT W. HAENNI and
ANN H. HAENNI

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

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

State of New York
County of Albany

MARYLOU SAMUELS, 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 5th day of May, 1976, she served the within Notice of Decision ~~(for Determination)~~ by (certified) mail upon Albert W. Haenni and Ann H. Haenni ~~(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. Albert W. Haenni
21 Fordham Road
Livingston, 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

5th day of May, 1976.

Just Mack

Marylou Samuels

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT W. HAENNI and
ANN H. HAENNI

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For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article (x) 22 of the
Tax Law for the Year(s) 1970 and 1971:

State of New York
County of Albany

MARYLOU SAMUELS, 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 5th day of May, 1976, she served the within Notice of Decision (~~or Determination~~) by (certified) mail upon Peter McMEnamin and Howard Schlesinger (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Peter A. McMEnamin, CPA
Howard Schlesinger CPA
c/o George Schiller & Co.
161 East 42nd Street
New York, New York 10017 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

5th day of May, 1976

Janet Mack

Marylou Samuels



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 5, 1976

TELEPHONE: (518) 457-3850

Mr. and Mrs. Albert W. Haenni
21 Fordham Road
Livingston, New Jersey

Dear Mr. and Mrs. Haenni:

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

Please take further notice that pursuant to
Section ~~690~~ **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,

Paul B. Coburn
Paul B. Coburn
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ALBERT W. HAENNI and :
ANN H. HAENNI : DECISION
for Redetermination of Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law :
for the years 1970 and 1971. :

Petitioners, Albert W. Haenni and Ann H. Haenni, residing at 21 Fordham Road, Livingston, New Jersey, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970 and 1971 (File No. 1-73194415). A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 8, 1975, at 3:00 P.M. Petitioners appeared by Peter A. McMenamain and Howard Schlesinger, C.P.A.'s. The Income Tax Bureau appeared by Peter Crotty, Jr., Esq. (Michael Alexander, Esq. of counsel).

ISSUE

Did petitioner, the late Albert W. Haenni, necessarily perform work for his employer, Charles R. Weber Company of 630 Fifth Avenue, New York, New York, in petitioner's home in New Jersey during the years 1970 and 1971 and, if so, was any time so spent allocable as days worked without New York State?

FINDINGS OF FACT

1. Petitioners, Albert W. Haenni and his wife, Ann Haenni, filed New York State income tax nonresident returns for the years 1970 and 1971. On Schedule A-1, "Allocation of wage and salary income to New York State," they alleged that petitioner, the late Albert W. Haenni, worked 129 days outside of New York State in 1970 and 121 days outside of New York State in 1971. He allocated his salary income from all sources during said two years according to those figures. His total salary income for each year was \$90,000.00, earned as an employee of Charles R. Weber Company at their office in New York, New York.

2. On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Albert W. Haenni and Ann H. Haenni, revising their allocations of income for the years 1970 and 1971. It disallowed the allocation of time in both years spent by petitioner, the late Albert W. Haenni, at his home in New Jersey, as days worked outside of New York State for Charles R. Weber Company on the ground that it was not a proper base for allocations of income from salary and wages. In accordance with the aforesaid Statement of Audit Changes it issued a Notice of Deficiency for the year 1970 of \$4,651.04 and for the year 1971 of \$5,407.40, totalling \$10,058.44, plus interest of \$1,482.06 coming to an overall total of \$11,540.50.

3. Petitioners, Albert W. Haenni and Ann H. Haenni, were residents of State of New Jersey during the years 1970 and 1971.

4. Petitioner, the late Albert W. Haenni, was employed in New York by Charles R. Weber Company as a senior broker during the years 1970 and 1971. The Company was engaged in the ship brokering business, more specifically the brokering of oil tankers.

5. The business of ship brokerage of oil tankers is international and world wide and because of time zone difference around the globe trading goes on during all the 24 hours of the day. As a consequence, brokers must, on occasion, conduct business at night or on weekends via long distance telephone.

6. Petitioner, the late Albert W. Haenni, while employed by the Weber Company at 630 Fifth Avenue, New York, New York, performed work for his employer in his home in New Jersey during a number of nights and Saturdays and Sundays during the years 1970 and 1971.

CONCLUSIONS OF LAW

A. That any time worked at home in New Jersey by petitioner, the late Albert W. Haenni, during the years 1970 and 1971 was worked there by reason of his necessity and convenience and not for the necessity of his employer 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 20 NYCRR 131.16.

B. That the petition of the late Albert W. Haenni and Ann H. Haenni is denied and the Notice of Deficiency issued April 12, 1974, is sustained.

DATED: Albany, New York
May 3, 1976

STATE TAX COMMISSION

PRESIDENT

Matthew Green

COMMISSIONER

James A. Sullivan

COMMISSIONER

*James A. Sullivan
did not take position
this case*