

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ARTHUR HULL HAYES

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 ~~(ss)~~ 22 of the
Tax Law for the Year ~~(ss)~~ 1967.

State of New York
County of Albany

Donna Scranton, 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, 1976, she served the within Notice of Decision ~~for Determination~~ by (certified) mail upon Mr. Arthur Hull Hayes ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Arthur Hull Hayes
40 West Way
Old Greenwich, Connecticut

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)~~ ~~(ss)~~ 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 May, 1976

Janet Mack

Donna Scranton

STATE OF NEW YORK
STATE TAX COMMISSION

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Donna Scranton

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age, and that on the 21st day of May, 1976, she served the within
Notice of Decision ~~for Determination~~ by (certified) mail upon Richard E.
Halperin, Esq. &
Eugene L. Vogel, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows Richard E. Halperin, Esq. & Eugene L. Vogel, Esq.
Roseman, Colin, Kaye, Petschek, Freund & Emil
575 Madison Avenue
New York, N.Y. 10022
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

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Donna Scranton



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, N. Y.
May 21, 1976

TELEPHONE: (518) 457-3850

Mr. Arthur Hull Hayes
40 West Way
Old Greenwich, Connecticut

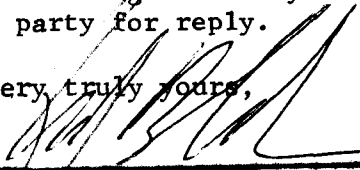
Dear Mr. Hayes:

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,


PAUL B. COBURN
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

ISSUE

The issue in this case is the proper method of allocation to New York sources of salary received under an agreement contemplating that petitioner work at his out-of-state home.

FINDINGS OF FACT

1. Arthur Hull Hayes was a domiciliary and resident of the State of Connecticut in 1967.

2. Mr. Hayes was, and had been for many years, President of the CBS Radio Division, (hereinafter called "CBS Radio") of the Columbia Broadcasting System, Inc. ("CBS"). On May 25, 1967, he entered into an agreement with CBS to relinquish his status as President but to continue as an employee until July 31, 1969.

3. On May 25, 1967, Mr. Hayes did relinquish his position as President of CBS and moved out of his offices. Thereafter, he had no office space provided for him in New York.

4. The agreement of May 25, 1967, was in the form of a letter from CBS to Mr. Hayes which stated in part:

"You will continue as a full-time employee of CBS through July 31, 1969, and will perform such duties and shall have such responsibilities as may be assigned to you from time to time

"We expect that you will be able to perform most of your duties and responsibilities at your home. However, if we ask you to do so,

you will perform such duties in New York City or any other place reasonably near your home and you will hold yourself available to do any reasonable amount of traveling required in connection with the duties and responsibilities assigned to you. We will reimburse you for expenses incurred at our request."

5. Mr. Hayes received \$65,000.00 as salary from CBS, Inc. in 1967. Of this amount, the amount of \$26,250.00 was received for work done prior to May 25 and \$38,750.00 was received for the period May 25 through December 31.

6. Prior to May 26, Mr. Hayes worked 82 days in New York and 19 days outside of New York counting six weeks and days while traveling.

7. Subsequent to May 25, Mr. Hayes reported 150 working days as worked outside of New York State at his home in Connecticut.

8. Mr. Hayes did not, subsequent to May 25, come into New York for business reasons. He did hold himself available at his Connecticut home for any duties assigned to him. He was telephoned once by CBS at his home in Connecticut.

9. On July 31, 1969, Mr. Hayes retired from CBS and received normal retirement benefits including a lump sum payment in lieu of an annuity, deferred compensation and benefits under a stock plan.

10. The 1967 tax return filed by Mr. Hayes counted as worked in New York only 82 days and counted as work days outside of New

York the 150 days in Connecticut, the 13 days traveling on week-
days and the six days traveling on weekend days. The total working
days amount to 251.

11. The deficiency notice counts as days worked in New York
the 82 days as reported, the 150 days in Connecticut and an
additional 12 days for unknown reasons. It counts as days worked
outside of New York only the 13 days traveling on weekdays. The
total working days amount to 257.

CONCLUSIONS OF LAW

A. That days worked by petitioner, Arthur Hull Hayes, at
his home in Connecticut during the year 1967 were worked there by
reason of his necessity and convenience and not for the necessity
of his employer, and therefore said days must be held to be days
worked within New York State in accordance with the meaning and
intent of section 632(c) of the Tax Law and 20 NYCRR 131.16. The
nature of his work was such that his employer could have furnished
facilities for his use in New York State.

B. That the petition of Arthur Hull Hayes is denied, and the
notice of deficiency issued September 22, 1970 is sustained.

DATED: Albany, New York
May 21, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER