

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MARVIN and CAROL KITMAN

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 :

State of New York  
County of Albany

Barbara Quirino, 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 28th day of September, 1976, she served the within Decision by (certified) mail upon Marvin and Carol Kitman (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Marvin and Carol Kitman  
147 Crescent Avenue  
Leonias, 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 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

28th day of September, 1976.

Barbara Quirino

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MARVIN and CAROL KITMAN

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) ~~xxxxxx~~ 1970:

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Barbara Quirino, 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 28th day of September, 1976, she served the within Decision by (certified) mail upon Edwin Marcum (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Edwin Marcum, Esq.  
4250 Hempstead Turnpike  
Bethpage, NY 11714  
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

28th day of September, 1976.

Barbara Quirino

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

**457-3850**

TELEPHONE: (518) \_\_\_\_\_

**September 28, 1976**

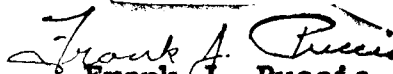
Marvin and Carol Kitman  
147 Crescent Avenue  
Leonia, New Jersey

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:  
**Edwin Marcum, Esq.**

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
MARVIN and CAROL KITMAN	:	DECISION
	:	
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1970.	:	

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Petitioners, Marvin and Carol Kitman, residing at 147 Crescent Avenue, Leonia, 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 year 1970. (File No. 0-53154607). A small claims hearing was held before Joseph Chyrywaty, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 9, 1976, at 1:15 P.M. Petitioners appeared by Edwin Marcum, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUE

Was the time worked by petitioner, Marvin Kitman, at home in New Jersey, for Newsday, Inc. during the year 1970, allocable as days worked without New York State?

FINDINGS OF FACT

1. Petitioners, Marvin and Carol Kitman, filed a New York State income tax nonresident return for the year 1970. On Schedule A-1, (Allocation of Wage and Salary Income to New York State), they alleged that petitioner, Marvin Kitman, worked 118 days outside of New York State and 128 days in New York State during 1970.

2. On April 3, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Marvin and Carol Kitman. The Income Tax Bureau disallowed the allocation of working time spent at their New Jersey home upon the grounds that it was for the convenience of the employer or employee. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued in the sum of \$1,103.49.

3. Petitioners, Marvin and Carol Kitman, were residents of New Jersey during 1970.

4. Petitioner, Marvin Kitman, was employed by Newsday, Inc., a Long Island newspaper, during 1970. Newsday, Inc. maintains an office at 550 Stewart Avenue, Garden City, Long Island, New York. He is a television critic and writes an average of five columns a week for Newsday, Inc.

5. Petitioner, Marvin Kitman, worked in his home rather than in the Newsday office. This was done for the purpose of his being close to a television set at all hours of the day and night. He maintained a bank of television sets in his home from which he viewed the programs he would critique. He would then research and prepare his column at home prior to delivering the completed column to the Long Island office.

6. Petitioner, Marvin Kitman, appeared at the Long Island office only to deliver his column or for conferences with his superiors.

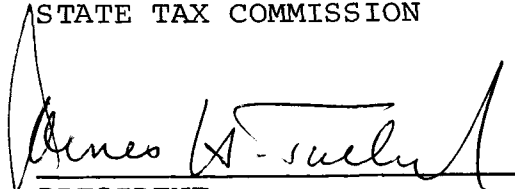
CONCLUSIONS OF LAW

A. That the petitioner was not required by necessity to perform services for his employer outside New York on the days that he worked at his home in New Jersey, but rather such services were performed there for his greater convenience and that the income derived therefrom constitutes income attributable to New York sources in accordance with the meaning and intent of section 632(c) of the Tax Law. The nature of his work was such that his employer could have furnished facilities for his use in New York State similar to his facilities in New Jersey.

B. That the petition of Marvin Kitman is denied and the Notice of Deficiency issued December 28, 1973, is sustained.

DATED: Albany, New York  
September 28, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER