

In the Matter of the Petition

of

DANIEL N. AND ROSANNE D. LEESON

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) ~~xxxx Period(s)~~ 1971:

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 27th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Daniel N. & Rosanne D. Leeson (~~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. Daniel N. Leeson
27-08 Berdan Avenue
Fair Lawn, New Jersey 07410 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
27th day of September, 1976.







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

TELEPHONE: (518) 457-3850

September 27, 1976

Mr. and Mrs. Daniel N. Leeson
27-08 Berdan Avenue
Fair Lawn, New Jersey 07410

Dear Mr. and Mrs. Leeson:

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

Please take further notice that pursuant to
Section(~~xx~~ **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: ~~Director of Tax Administration~~

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
DANIEL N. AND ROSANNE D. LEESON : DECISION
for the Redetermination of Deficiency or :
for Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Year 1971.:
:

Petitioners, Daniel N. and Rosanne D. Leeson, 27-08 Berdan Avenue, Fair Lawn, New Jersey, 07410, filed a petition for re-determination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for 1971. On May 26, 1976, petitioners advised the State Tax Commission that they desired to waive the small claims hearing and submit the case to the State Tax Commission for a determination or decision based on the record contained in the file and the "summary of argument" attached to the waiver.

ISSUE

Do paid holidays, vacation days and sick days constitute work days includable in days worked outside New York State for a nonresident taxpayer?

(2)

FINDINGS OF FACT

Taxpayer, Daniel N. Leeson, a New Jersey resident in 1971, was employed by International Business Machines Corporation located in White Plains, New York as a mathematician. He timely filed a New York State income tax nonresident return for 1971 (IT-203) in conjunction with his wife, Rosanne D. Leeson. In making allocation for days worked outside New York State, taxpayer included eleven holidays, ten vacation days, one Saturday and one Sunday. Upon examination of the return for the year in question, the Income Tax Bureau recomputed the taxpayer's liability by deleting the eleven holidays and ten vacation days from days worked outside New York State. The Saturday and Sunday were allowed since taxpayer worked on those days.

In his "summary of argument" taxpayer contended that the holidays and vacation days were paid work days and as such "should be deducted from gross taxable income reducing the non-resident's tax burden for New York State".

CONCLUSIONS OF LAW

That the inclusion of eleven holidays and ten vacation as days worked outside New York State was erroneous. Section 131.16 of the Personal Income Tax Regulations is very specific in terminology and application. It states, in part, "in making the

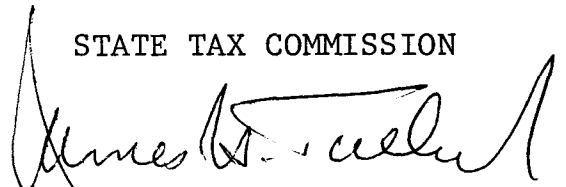
(3)

allocation provided for in this section, no account is taken for non-working days, including Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation, or leave with or without pay."

That the petition of Daniel N. and Rosanne D. Leeson is denied and the Notice of Deficiency issued is sustained together with such interest as may be lawfully owing.

DATED: Albany, New York
September 27, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER