

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD R. and DOLORES MOSER

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(x)~~ 22 of the
Tax Law for the Year ~~(x)~~ 1970.

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

State of New York
County of Albany

MARY GROFF, 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 3rd day of February, 1976, she served the within
Notice of Decision ~~(xx) Debarment (xx)~~ by (certified) mail upon BERNARD R. and

DOLORES MOSER ~~(xx) Represented by (xx)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. and Mrs. Bernard R. Moser
28 North Crescent
Maplewood, New Jersey 07040

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 ~~(xx) Represented by (xx)~~
~~xx~~) petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(xx) Represented by (xx)~~ petitioner.

Sworn to before me this

3rd day of February, 1976

Janet Mack

Mary Groff



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) 457-3850

DATED: Albany, New York
February 3, 1976

Mr. and Mrs. Bernard R. Moser
28 North Crescent
Maplewood, New Jersey 07040

Dear Mr. and Mrs. Moser:

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.

Any 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.
These will be referred to the proper party for
reply.

Very truly yours,

PAUL GREENBERG

HEARING OFFICER
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: ~~XXXXXXXXXXXX~~ Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BERNARD R. and DOLORES MOSER	:	DECISION
for a Redetermination of a Deficiency or	:	
for a Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

Petitioners, Bernard R. and Dolores Moser, 28 North Crescent, Maplewood, New Jersey 07040, 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 year 1970. (File No. 0-69181020).

The petitioners waived in writing a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Did the petitioners, Bernard R. and Dolores Moser, properly allocate earnings to sources outside of New York on the basis of purported workdays outside of the State of New York?

FINDINGS OF FACT

1. Petitioners, Bernard R. and Dolores Moser, timely filed Federal and New York State nonresident tax returns for 1970. During 1970, the petitioners were residents of New Jersey.

2. On December 28, 1973, a Statement of Audit Changes was issued against the petitioners asserting that additional tax was

due on the grounds that the petitioners had improperly allocated income to sources without the State of New York. A Notice of Deficiency was issued in the total amount of \$536.20 representing \$461.39 in additional tax plus interest thereon of \$74.81.

3. Petitioner, Bernard R. Moser, was employed as a salesman by Kohlmeyer & Co., 147 Carondelet Street, New Orleans, Louisiana 70130, and was based in the State of New York. On their New York State nonresident return, the petitioners stated that 151 days were worked in the State of New York, out of a total of 261 workdays and allocated New York income received from Kohlmeyer & Co. on that basis. Petitioner, Bernard R. Moser, also received commissions from Meicham & McDougal (Roseland, New Jersey), Optico Corporation (Philadelphia, Pennsylvania), Sherman Optical Corporation (Yonkers, New York) totalling \$16,133.00. This figure was offset by \$11,023.00 in business expenses related to the commissions leaving a net gain in commissions of \$5,110.00. The petitioners did not include this commission income with New York income.

4. On October 18, 1971 and February 29, 1972, the Income Tax Bureau sent letters to the petitioners requesting a statement showing the exact dates of days worked outside the State of New York, the location where services were rendered and the nature of duties performed along with other items of information.

5. Petitioner, Bernard R. Moser, in a letter dated March 24, 1974, stated that the amount of days worked in the State of New York totalled no more than sixty working days. The petitioner did not

offer any information concerning exact dates of workdays outside of the State of New York, the locations where services were rendered or the nature of duties performed to substantiate this claim.

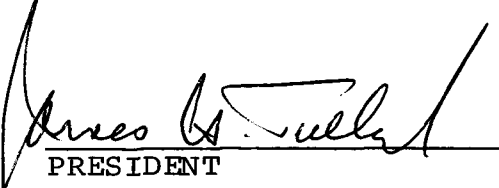
CONCLUSIONS OF LAW

A. That the petitioners, Bernard R. and Dolores Moser, did not properly allocate earnings to sources without the State of New York. The petitioners failed to substantiate their claim as to the number of workdays spent without the State of New York.

B. That the petition is denied.

DATED: Albany, New York
February 3, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER