

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
LAWRENCE J. RIORDAN  
and  
MARTHA T. RIORDAN  
For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the Year(s) 1968, 1969  
and 1970

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

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 11th day of June, 1976, she served the within Notice of Decision (~~or Determination~~) by (certified) mail upon Lawrence J. Riordan and Martha T. Riordan (~~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. Lawrence J. Riordan  
173 Nutley Avenue  
Nutley, New Jersey 07110 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

11th day of June, 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

TELEPHONE: (518) **457-3850**

June 11, 1976

Mr. and Mrs. Lawrence J. Riordan  
173 Nutley Avenue  
Nutley, New Jersey 07110

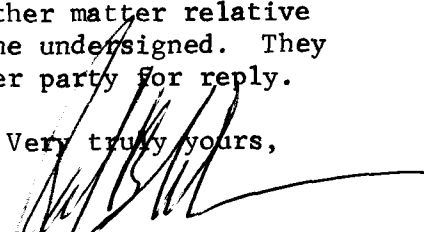
Dear Mr. and Mrs. Riordan:

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: ~~Taxpayer's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
LAWRENCE J. RIORDAN :  
and : DECISION  
MARTHA T. RIORDAN :  
for a Redetermination of Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Years :  
1968, 1969 and 1970. :  
:

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Petitioners, Lawrence Riordan and Martha T. Riordan, residing at 173 Nutley Avenue, Nutley, 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 1968, 1969 and 1970. (File No. 0-53146969). 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 12, 1975, at 10:00 A.M. Petitioner, Lawrence Riordan, appeared pro se, and for his wife, petitioner, Martha T. Riordan. The Income Tax Bureau appeared by Peter J. Crotty, Jr., Esq., (Michael Alexander, Esq., of counsel).

ISSUE

Were days worked at home in New Jersey during the years 1968, 1969 and 1970 by petitioner, Lawrence J. Riordan, allocable as days worked within or days worked without New York State?

FINDINGS OF FACT

1. Petitioners, Lawrence J. Riordan and Martha T. Riordan, filed timely New York State income tax nonresident returns for the years 1968, 1969 and 1970. They allocated the income received by petitioner, Lawrence J. Riordan, based upon the number of days alleged to have been worked by him within and without New York State during said years.

2. On November 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Lawrence J. Riordan and Martha T. Riordan, imposing additional personal income tax for the years 1968, 1969 and 1970 upon the ground that various days worked at home in New Jersey was not a proper basis for allocation of income. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency for the years 1968, 1969 and 1970 totaling \$943.32.

3. Petitioner, Lawrence J. Riordan, during the years in question was employed by the United States Information Agency as a photographer-journalist. He was based in 250 West 50th Street, New York, New York. His assignments, covering American and foreign dignitaries, including the President of the United States, foreign heads of State and official visitors, would take him to various parts of the globe. The administrative office of the U.S. Information Agency was in New York, New York where such facilities as desk, telephone, a facsimile machine and a typewriter were available and used by him. There was also overnight pouch delivery service from the New York office to the home office in Washington, D.C. At least half of his assignments was in the New York City area. No space and no equipment was provided for processing film and prints.

4. Petitioner, Lawrence J. Riordan, had a photography laboratory in the basement of his residence in Nutley, New Jersey. He had a darkroom, eight feet by fourteen feet, which contained all equipment necessary for processing film prints and color prints. He developed and printed the film and did other laboratory work in his home darkroom as required. He was reimbursed for all materials. Developing, printing and similar work had to be done under short deadlines. He had to write captions or necessary texts on the photos or photo albums that he made up from time to time. For these reasons commercial

processing which took one, two or many days was impractical for him to meet short deadlines. At home, he could develop his film at any time of day, write his captions, mail his work to Washington, and then be ready for another assignment. To send the unprocessed film to Washington and return the proofs with the captions and text would take a week or more. Deadlines were an important feature for news stories for the U.S. Information Agency supplying some 70 to 80 magazines abroad with his material. He would put the finished work in the overnight pouch in his New York office to be delivered in Washington the next day. Nutley, New Jersey, twelve miles from New York, New York is within an hour commuting time.

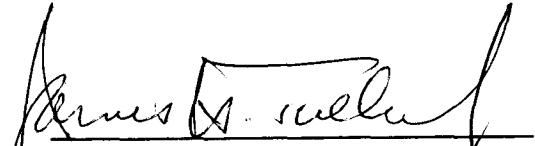
CONCLUSIONS OF LAW

A. That the days worked at home in New Jersey by petitioner, Lawrence J. Riordan, during the years 1968, 1969 and 1970 were worked there by reason of his necessity and convenience and not for the necessity of his employer and therefore said days may not be held to be days worked without New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16. There is no evidence that a photographic laboratory could not have been set up in New York for his use by his employer.

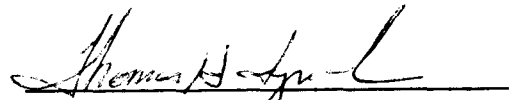
B. That the petition of Lawrence J. Riordan and Martha T. Riordan is denied and the Notice of Deficiency issued on November 26, 1973, is sustained.

DATED: Albany, New York  
June 11, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER