

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
C. WALLACE SMITH and
KATHERINE J. SMITH
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)~~
1968 & 1969

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor, 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 8th day of December, 1976, she served the within Notice of Decision by (certified) mail upon Sidney Pepper, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Sidney Pepper, Esq.
225 Broadway
New York, New York 10007
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

8th day of December, 1976.

Bruce Batchelor

Just Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

C. WALLACE SMITH and
KATHERINE J. SMITH

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)
~~XXXXXXXXXX~~
1968 and 1969.

State of New York
County of Albany

Bruce Batchelor, 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 8th day of December, 1976, she served the within Notice of Decision by (certified) mail upon C. Wallace Smith & Katherine J. Smith ~~(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. C. Wallace Smith
11 Pine Terrace West
Short Hills, New Jersey 07078 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

8th day of December, 1976.

Bruce Batchelor

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

December 8, 1976

TELEPHONE: (518) 457-3850

Mr. and Mrs. C. Wallace Smith
11 Pine Terrace West
Short Hills, New Jersey 07078

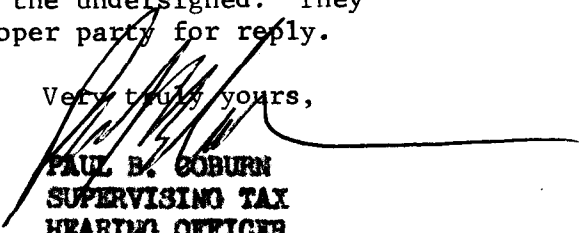
Dear Mr. and Mrs. Smith:

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:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
C. WALLACE SMITH and :
KATHERINE J. SMITH : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for the :
Years 1968 and 1969. :

Petitioners, C. Wallace Smith and Catherine J. Smith, residing at 11 Pine Terrace West, Short Hills, New Jersey, 07078 have filed a petition for redetermination of a deficiency or for a refund of personal income taxes under Article 22 of the Tax Law for the years 1968 and 1969. (File No. 0001232). A formal hearing was held before Julius E. Braun, Esq., Hearing Officer on February 25, 1976, at 9:20 A.M. and Nigel Wright, Esq., Hearing Officer, on June 14, 1976, at 1:30 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. Petitioners appeared by Sidney Pepper, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Solomon Sies, Esq. of counsel).

ISSUE

Whether petitioners, C. Wallace Smith and Katherine J. Smith, properly allocated their income for the years 1968 and 1969.

FINDINGS OF FACT

1. Petitioners, C. Wallace Smith and Katherine J. Smith, filed New York State income tax nonresident returns for the years 1968 and 1969. They claimed a percentage of their income was earned in New York State based upon the total number of days worked within New York State. However, they failed to show the allocation of their salary income.

2. On May 21, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, C. Wallace Smith and Katherine J. Smith, imposing New York State personal income tax for the years 1968 and 1969 upon all their income on the grounds that they failed to establish the basis of allocation of wages earned within and without New York State. Accordingly, the Income Tax Bureau issued a Notice of Deficiency on May 21, 1973, in the amount of \$7,739.54 plus interest of \$1,671.78 for a total sum of \$9,411.32.

3. In 1968 and 1969, petitioner, C. Wallace Smith, was associated with Smith, Barney & Co. of 20 Broad Street, New York, New York, as a registered representative offering to his clients, various security investments on a commission basis. His clients were located in New York, New Jersey, Connecticut and Virginia. He would make personal calls on the individuals and corporations wherever they were located.

4. Petitioner, C. Wallace Smith, had a desk in the sales department of the Smith, Barney & Co. in New York City and a company telephone. His business card stated his name, the company name and its New York City address. He conducted some business from this location.

5. Petitioner, C. Wallace Smith's diaries for the years 1968 and 1969 listed by date various proper names and/or some activity; whether social, business or pleasure followed by a city designation. His analyses of sales for the years 1968 and 1969, on IBM sheets, listed transactions of sales made with various customers, their address, the category of the stock, volume, income, brokerage and their value.

CONCLUSIONS OF LAW

A. That petitioners, C. Wallace Smith and Katherine J. Smith, failed to submit documentary or other sufficient evidence to substantiate their claim of income, within and without the State of New York attributable to the business of securities salesman. Specifically, they failed to show where the sales activities were carried on, which may then be apportioned and allocated, according to the meaning and intent of Section 632(c) of the Tax Law and 20 NYCRR 131.13 and 131.15.

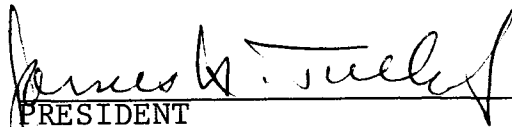
B. That since petitioners, C. Wallace Smith and Katherine J. Smith, have failed to submit proof of income for the years 1968 and 1969 from sources within and without New York State, all of

said income is considered to be derived solely from New York sources according to the meaning and intent of Section 632(b) of the Tax Law and 20 NYCRR 131.13 and 131.21.

C. That the petition of C. Wallace Smith and Katherine J. Smith is denied and the Notice of Deficiency issued May 21, 1973, is sustained.

DATED: Albany, New York
December 8, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER