

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
STANLEY APPLEBAUM & RITA APPLEBAUM

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (X) 22 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
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 7th day of June , 19 77 , she served the within

Notice of Decision by (certified) mail upon Stanley Applebaum &  
Rita Applebaum ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. & Mrs. Stanley Applebaum  
632 Winchester Avenue  
Union, New Jersey 07083

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)~~  
~~XXXXXX~~ 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

7th day of June , 19 77

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
STANLEY APPLEBAUM & RITA APPLEBAUM

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (x) 22 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1968 & 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 7th day of June, 1977, she served the within

Notice of Decision by (certified) mail upon Bert Padell, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Bert Padell, Esq.  
405 Park Avenue  
New York, New York 10022

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

7th day of June, 1977.

Bruce Batchelor

Janet Mach



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

June 7, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Stanley Applebaum  
632 Winchester Avenue  
Union, New Jersey 07083

Dear Mr. & Mrs. Applebaum:

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

Please take further notice that pursuant to  
Section(x) **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

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In the Matter of the Petition	:	
	:	
of	:	
	:	
STANLEY APPLEBAUM and RITA APPLEBAUM	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1968 and 1969.	:	
	:	

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Petitioners, Stanley Applebaum and Rita Applebaum, 632 Winchester Avenue, Union, New Jersey 07083, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968 and 1969. (File No. 00563).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 27, 1976 at 1:15 P.M. Petitioners appeared by Bert Padell, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of counsel).

#### ISSUES

I. Whether Paul Semmel had been granted power of attorney on February 10, 1972, by petitioners, Stanley and Rita Applebaum,

so as to enable him to sign a consent on their behalf, extending the statute of limitations applicable to the assessment of personal income tax for the year 1968.

II. Whether petitioners, Stanley and Rita Applebaum, were residents of New York State for the year 1969, within the meaning and intent of section 605(a)(2) of the Tax Law.

III. Whether days worked at home by petitioner, Stanley Applebaum, were properly allocated as days worked outside New York State, during the years 1968 and 1969.

#### FINDINGS OF FACT

1. Petitioners, Stanley and Rita Applebaum, filed a New York State nonresident income tax return for the year 1968. They listed total Federal income as \$70,487.46. They also listed total wages and salaries of \$60,276.14 to be allocated. From this initial amount, a deduction was taken for the 187 days worked at home by petitioner, Stanley Applebaum, thus finally allocating \$15,069.04 as income derived from New York State sources.

2. Petitioners, Stanley and Rita Applebaum, filed a New York State nonresident income tax return for the year 1969. They listed total Federal income as \$69,366.00. They listed total wages and salaries of \$61,040.00 to be allocated. From this initial amount, a deduction was taken for the 150 days worked

at home by petitioner, Stanley Applebaum, thus finally allocating \$24,416.00 as income derived from New York State sources.

3. On January 29, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Stanley and Rita Applebaum, imposing additional personal income tax for the year 1968, upon the grounds that a portion of the \$60,276.14 of reported wages and salaries had been allocated to sources outside New York State, without substantiation. Additional personal income tax was imposed in the amount of \$5,798.35, plus \$1,317.96 in interest. Accordingly, a Notice of Deficiency was issued totaling \$7,116.31.

4. On January 29, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Stanley and Rita Applebaum, imposing additional personal income tax for the year 1969, upon the grounds that the petitioners maintained a permanent place of abode in New York State and spent, in the aggregate, more than 183 days in New York State and, therefore, were deemed residents of New York State. Income earned regardless of source was held allocable to New York State. Additional personal income tax was imposed in the amount of \$4,182.24, plus \$699.69 in interest. Accordingly, a Notice of Deficiency was issued totaling \$4,881.93.

5. Petitioners, Stanley and Rita Applebaum, executed a power of attorney in favor of Mr. Paul Semmel on January 24, 1972. On February 10, 1972, Mr. Paul Semmel signed a consent extending the statute of limitations applicable to the assessment of personal income tax on petitioners, Stanley and Rita Applebaum, for the year 1968.

6. Petitioners, Stanley and Rita Applebaum, were domiciled in New Jersey during the years in issue. Petitioner, Stanley Applebaum, maintained an apartment in New York City during the years in issue. However, the petitioner did not spend more than 183 days in New York State during either of the years in issue.

7. During the period in issue, petitioner, Stanley Applebaum, wrote songs for "commercials" at his home in New Jersey, which were subsequently recorded for various employers in New York, New York. The petitioner, Stanley Applebaum, would supervise the recording sessions in New York for these songs.

8. During the years in issue, Stanley Applebaum, maintained a piano and other equipment needed to write the songs for said New York recording sessions, at his New Jersey home.

9. The petitioners, Stanley and Rita Applebaum, offered no documentary or other substantial evidence that an office

could not have been set up in New York, or that petitioner, Stanley Applebaum, worked in his residence of necessity, as distinguished from convenience.

CONCLUSIONS OF LAW

A. That Mr. Paul Semmel had the requisite power of attorney on February 10, 1972, to sign a valid consent extending the statute of limitations applicable to the assessment of personal income taxes against the petitioners, Stanley and Rita Applebaum, for the year 1968.

B. That petitioners, Stanley and Rita Applebaum, were nonresidents of New York State for the years 1968 and 1969, within the meaning and intent of section 605(a)(2) of the Tax Law.

C. That, since petitioner, Stanley Applebaum, performed services for his various employers at his New Jersey home for his convenience, as opposed to the actual necessity of his employer, therefore, all income derived from such services was allocable to New York State (Simms v. Procaccino, 47 A.D.2d 149, 365 N.Y.S.2d 73).

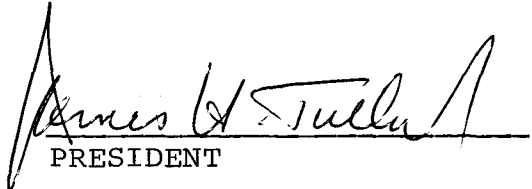
D. That, since petitioners, Stanley and Rita Applebaum, were not residents of New York State for the year 1969, only the income derived from wages and salaries in the sum of \$61,040.00, inclusive of the time worked at home in New Jersey by Stanley Applebaum, should be allocable to New York State.

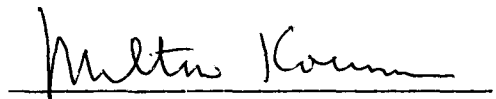


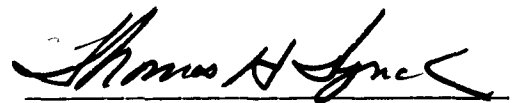
E. That the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued January 29, 1973, concerning the year 1969; and that, except as so granted, the petition of Stanley Applebaum and Rita Applebaum is in all other respects denied.

DATED: Albany, New York  
June 7, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER