

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS A. CHIAPPA and MARY V. CHIAPPA:

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 and 1969.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of April, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Thomas A. & Mary V.
Chiappa (~~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. Thomas A. Chiappa
176 Valley Road
River Edge, New Jersey 07661

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

14th day of April, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS A. CHIAPPA and MARY V. CHIAPPA

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~~ ~~xxxxxx~~ :
1968 and 1969.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of April, 1977, he served the within
Notice of Decision by (certified) mail upon Philip A. Braunstein

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Philip A. Braunstein, CPA
Braunstein & Chernin
50 East 42nd Street
New York, New York 10017

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

14th day of April, 1977.

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

April 14, 1977

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

Mr. & Mrs. Thomas A. Chiappa
176 Valley Road
River Edge, New Jersey 07661

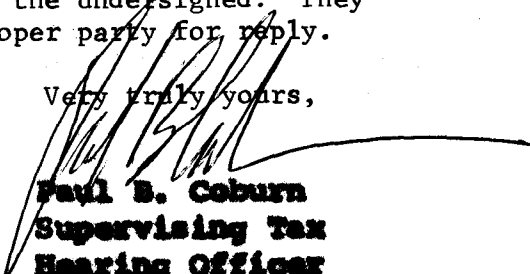
Dear Mr. & Mrs. Chiappa:

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

Please take further notice that pursuant to
Section **(E) 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 :
THOMAS A. CHIAPPA and MARY V. CHIAPPA : 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. :

Petitioners, Thomas A. Chiappa and Mary V. Chiappa, residing at 176 Valley Road, River Edge, New Jersey 07661, 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. 0-0001046).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 16, 1976 at 1:30 P.M. Petitioners appeared by Philip A. Braunstein, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq., of counsel).

ISSUE

Whether all of the salary income received by petitioner, Mary V. Chiappa, a nonresident, from Tony Bennett Enterprises, Inc. during the years 1968 and 1969, was allocable to New York.

FINDINGS OF FACT

1. Petitioners, Thomas A. Chiappa and Mary V. Chiappa, filed New York State income tax nonresident returns for the years 1968 and 1969, and an amended return for 1968. They allocated salary income received by petitioner, Mary V. Chiappa, in the sums of \$26,000.00 in 1968 and \$27,000.00 in 1969, based upon the number of days she alleged to have worked within and without New York State during said years. They claimed that she had worked a total of 228 days during each of the two years, of which 114 days were worked outside of New York State in each year.

2. On June 28, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Thomas A. Chiappa and Mary V. Chiappa, his wife, stating that New York personal income tax was due for the year 1969 on \$27,000.00 of income (the amount shown on petitioner, Mary V. Chiappa's withholding statement, which was attached to the return), upon the grounds that time spent at a taxpayer's home in New Jersey was not a proper basis for allocation of income from salary and wages. The amount of personal income tax due was stated to be \$1,106.21. A Notice of Deficiency in that sum, plus interest, was issued to petitioners June 16, 1971.

3. On November 2, 1970, the Income Tax Bureau disallowed petitioners' claim for refund of \$1,170.00 for the taxable year 1968.

4. During the taxable years in issue, petitioner, Mary V. Chiappa, was employed by Tony Bennett Enterprises, Inc., with offices at 200 West 57th Street, New York, New York. Her position was that of executive secretary, and her duties included financing, arranging engagements and recording sessions, the hiring of musicians, as well as arranging for transportation, publicity and promotion for Tony Bennett.

5. Due to the hours worked by Tony Bennett and the time zone differences throughout the world, petitioner, Mary V. Chiappa, was frequently called at her home in River Edge, New Jersey, both nights and on weekends. Furthermore, petitioner worked out of her home on Tuesdays, Thursdays and Saturdays. When working in her home, she worked in an area of a room in the house containing other than office furniture. This area contained a desk and a typewriter, and had a cabinet in which various orchestrations and other material were kept. Petitioner, Mary V. Chiappa's primary responsibilities involved various arrangements for Tony Bennett, which she made by telephone.

6. The offices of Tony Bennett Enterprises, Inc. in New York had a telephone and sufficient room for a small library and shelves.

7. Persons in the entertainment field who were involved with Tony Bennett Enterprises, Inc. often contacted petitioner, Mary V. Chiappa, at her home in New Jersey.

8. No evidence of a phone listed to Tony Bennett Enterprises, Inc. in the New Jersey residence of petitioners, or other evidence to establish that the corporation maintained offices at 176 Valley Road in River Edge, New Jersey, was offered.

CONCLUSIONS OF LAW

A. That the 114 days claimed to have been worked in the New Jersey residence during both the years 1968 and 1969 by petitioner, Mary V. Chiappa, were worked there by reason of her necessity and convenience, and not for the necessity of her employer. Therefore, said 114 days in each of the two years must be held to be days worked within New York State in accordance with the meaning and intent of section 632(c) of the Tax Law

and 20 NYCRR 131.16.

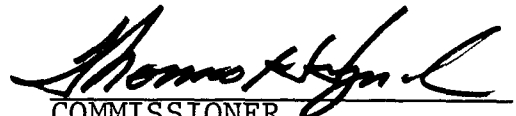
B. That the petition of Thomas A. Chiappa and Mary V. Chiappa for redetermination of a deficiency for 1969 and for redetermination of a disallowance of claim for refund denied in an amended return for 1968 is denied, and the Notice of Deficiency for 1969 dated June 16, 1971 and the Notice of Disallowance dated November 2, 1970 are sustained, together with such interest as may be lawfully due.

DATED: Albany, New York
April 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER