

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

R. JOSEPH and NORMA FUCHS

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)~~ 1972. :

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 4th day of March , 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon R. Joseph & Norma Fuchs

(~~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. R. Joseph Fuchs
12 Birch Hill Drive
Chatham, New Jersey 07928

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

4th day of March , 1977.

Bruce Batchelor

Janet Mack



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

March 4, 1977

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

Mr. & Mrs. R. Joseph Fuchs
12 Birch Hill Drive
Chatham, New Jersey 07928

Dear Mr. & Mrs. Fuchs:

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

Please take further notice that pursuant to
Section(3) **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,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE TAX COMMISSION

R. JOSEPH AND NORMA FUCHS : DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Year :
1972. :

Petitioners, R. Joseph and Norma Fuchs, residing at 12 Birch Hill Drive, Chatham, New Jersey, 07928, 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 1972 (File No. 2-23119041).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on July 15, 1976 at 1:15 p.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se and for his wife, petitioner, Norma Fuchs. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

ISSUE

Were the days on which petitioner worked at his home in New Jersey in 1972 considered to be days worked outside New York State in computing wages allocable to New York sources?

FINDINGS OF FACT

1. Petitioners, R. Joseph and Norma Fuchs, timely filed a New York State nonresident income tax return for the year 1972. Petitioner,

R. Joseph Fuchs, allocated his salary income for said year based upon the number of working days he allegedly worked within and without New York State during said year. Petitioner claimed that he worked 84 days during said year outside of New York State.

2. On November 24, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, R. Joseph and Norma Fuchs, imposing additional personal income tax due for the year 1972 upon the grounds that 47 days of the 84 days claimed as having been worked outside of New York during said year were worked at home in New Jersey and therefore, were not properly included in the claimed allocation. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$1,038.68.

3. Petitioner, R. Joseph Fuchs, is a securities analyst of Kidder, Peabody & Company. His duties for said firm included researching and producing written material of a particular industry or corporation. The work performed by the petitioner, R. Joseph Fuchs, is of a detailed nature.

4. Petitioner, R. Joseph Fuchs, is employed by Kidder, Peabody & Company at 10 Hanover Square, New York, New York. He is supplied with an office by said company at the above said location.

5. Petitioner, R. Joseph Fuchs, maintained one room in his home in Chatham, New Jersey, as an office during the year 1972. He was supplied by said company with calculators and such other equipment as he may require.

6. From the evidence submitted by the petitioner, R. Joseph Fuchs, the said company expects their research personnel, because of

the type of work performed and the interruptions which may occur at the office, to accomplish the established goals of the company and "must write reports in their homes, the local library, or some such insulated place where they will be undisturbed by all activities occurring at the office."

CONCLUSIONS OF LAW

A. That the 47 days worked at home in New Jersey during the year 1972 by petitioner, R. Joseph Fuchs, were worked there by reason of his necessity and convenience and not for the necessity of his employer. (Matter of Burke v. Bragalini, 10 AD 2d 654 and Matter of Speno et al. v. Gallman et al., 35 N.Y. 2d 256, 360 NYS 2d 855).

B. That the 47 days worked by petitioner at his home 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.

C. That the petition of R. Joseph and Norma Fuchs is denied and the Notice of Deficiency dated November 24, 1975 is sustained.

DATED: Albany, New York
March 4, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER