

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN D. and MARJORIE B. DAVIS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(ss)~~ 22 of the
Tax Law for the Year ~~(ss)~~ ~~or Period(s)~~ 1967.:

State of New York
County of Albany

Marsina Donnini, 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 29 day of July, 1977, she served the within Notice of Decision by (certified) mail upon John D. and Marjorie B. Davis ~~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. John Davis
163 Hannah's Road
Stamford, Conn. 06903
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

29 day of July, 1977.

Marsina Donnini

Just Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

July 29, 1977

Mr. & Mrs. John Davis
163 Hannah's Road
Stamford, Conn. 06903

Dear Mr. & Mrs. Davis:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty
Hearing Examiner

cc: ~~Repetition's Representative~~

Taxing Bureau's Representative

STATE TAX COMMISSION

for Redetermination of a Deficiency or:
for Refund of Personal Income Taxes
under Article 22 of the Tax Law for :
the Year 1967.

Petitioners, John D. and Marjorie B. Davis, residing at 163 Hannah's Road, Stamford, Connecticut 06903, have filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1967. (File No. 01147).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on February 25, 1977 at 10:45 A.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, Marjorie B. Davis. The Income Tax Bureau appeared by Peter Crotty, Esq., (Andrew Haber, Esq., of counsel).

ISSUES

I. Whether the days worked outside New York State by the petitioner, John D. Davis, during the year 1967 have been fully documented and/or can be considered as days worked outside New York State.

II. Whether the schedule "D" loss in the amount of \$4,200.00 claimed on the petitioner's 1967 New York State income tax return is deductible and/or fully documented.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On November 24, 1969, the Income Tax Bureau issued a Notice of Deficiency against the petitioners based upon the disallowance of the allocation of income inside and outside New York State and the schedule "D" loss in the amount of \$4,200.00, since the petitioners did not reply to letters from the Income Tax Bureau dated October 25, 1968 and January 30, 1969.

2. Petitioners, John D. and Marjorie B. Davis, timely filed a New York State nonresident income tax return for the year 1972. They allocated the income received by the petitioner, John D. Davis, upon the days worked within and without New York State. Petitioner claimed on said allocation, 135 days as days worked outside New York State.

3. During the year 1967, petitioner, John D. Davis, was employed by the Nestle Company, Incorporated from January 1, 1967 to approximately February 28, 1967 and received a salary income of \$4,079.47. The petitioner claimed four days of the forty working days during the period as days worked outside New York State. From approximately March 1, 1967 to August 31, 1967, the petitioner was employed by Mobil Oil Corporation and received a salary of \$12,500.04. The petitioner claimed sixty days of the 128 working days during this period as days worked outside New York State. From approximately September 1, 1967 to December 31, 1967, the petitioner operated as an independent

marketing consultant and earned \$3,189.45, working out of his home located in Connecticut. During this period the petitioner claimed eleven days as days worked in New York State out of 82 total workdays.

4. The days worked outside of New York State by the petitioner, John D. Davis, while employed by the Nestle Company, Incorporated and Mobil Oil Corporation did not include any days worked at home in Connecticut.

5. The petitioners purchased a home in Rochester, New York on May 15, 1967 for \$47,000.00, which they contended was to be used as rental property. Due to the economic conditions in Rochester they sold this house on August 2, 1967 for \$42,800.00. The petitioners presented documentary evidence substantiating the cost and selling price of said property. However, no evidence was presented to show that the property was rented, offered for rent or used in a trade or business.

6. That the four days worked outside New York State by the petitioner, John D. Davis, during the period January 1, 1967 to February 28, 1967 while employed by the Nestle Company, Incorporated and the sixty days worked outside New York State by the petitioner, during the period March 1, 1967 to August 31, 1967, while employed by Mobil Oil Corporation, were days worked outside New York State for the necessity of his employers pursuant to 20 NYCRR 131.16. The petitioner also worked outside New York State on seventy-one days during the period in 1967 when he performed services as an independent marketing consultant.

7. That separate allocations are required to be made with respect to the income received by petitioner in the year 1967 from Nestle Company, Incorporated, Mobil Oil Corporation and from his activity as an independent marketing consultant as services were performed both within and without New York State with respect to each such employment.

8. That the Income Tax Bureau is instructed to allocate to New York State for personal income tax purposes income received by petitioner, John D. Davis, from Nestle Company, Incorporated, Mobil Oil Corporation and from his own activities as an independent marketing consultant, on the basis of the ratios that 36 days bears to 40 days, that 68 days bears to 128 days and that 11 days bears to 82 days, respectively.

9. That the petitioners incurred a loss of \$4,200.00 during the year 1967 in connection with investment property and not in connection with rental property; that the loss allowable as a deduction against ordinary income for the taxable year 1967 was limited to \$1,000.00 in accordance with section 1211 of the Internal Revenue Code; that the investment property on which the loss was incurred constituted real property located within New York State in accordance with 20 NYCRR 131.14 and that therefore a loss of \$1,000.00 is to be allowed by the Income Tax Bureau in determining the petitioners' 1967 New York State personal income tax liability.

10. That the petition of John D. and Marjorie B. Davis is granted to the extent indicated in paragraphs 8 and 9 above,

that the Notice of Deficiency issued November 24, 1969 is to be accordingly modified by the Income Tax Bureau and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
July 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER