

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JERRY and DOLORES B. GLYNN

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) xxxxx~~ 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 7th day of March, 1977, she served the within Notice of Decision by (certified) mail upon Jerry and Dolores B. Glynn (~~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. Jerry Glynn
8 Ferncliff Road
Cos Cob, Connecticut 06807

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 March, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JERRY and DOLORES B. GLYNN

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) ~~1971~~ 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 7th day of March, 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon R. Douglas Taylor

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: R. Douglas Taylor, Public Accountant
P.O. Box 83
Stone Ridge, NY 12484

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 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 7, 1977

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

Mr. & Mrs. Jerry Glynn
8 Ferncliff Road
Cos Cob, Connecticut 06807

Dear Mr. & Mrs. Glynn:

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

Please take further notice that pursuant to
Section(~~6~~) **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: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JERRY and DOLORES B. GLYNN : DECISION
for Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1972. :

Petitioners, Jerry and Dolores B. Glynn, residing at 8 Ferncliff Road, Cos Cob, Connecticut 06807, 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 1972. (File No. 2-23116687).

A small claims hearing was held September 8, 1976, at 1:15 p.m. at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, before Harry Huebsch, Hearing Officer. The petitioners appeared by R. Douglas Taylor, Public Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq., of counsel).

ISSUES

I. Are days worked at home by a nonresident considered to be days worked out of New York for purposes of allocation of income?

II. Was petitioner, Jerry Glynn, an independent contractor with an out-of-state office from October 12, 1972 to December 31, 1972?

FINDINGS OF FACT

1. Petitioners, Jerry and Dolores B. Glynn, filed a New York State personal income tax nonresident return for 1972. Petitioner, Jerry Glynn, allocated his income in Schedule A-1 as 241 days worked, 141 of said days were worked in New York and 100 days worked outside of New York State. The Income Tax Bureau held that 42 of the days claimed as days worked at home were to be considered as days worked in New York State. An adjustment was also made for nine Saturdays and Sundays erroneously claimed as nonworking days. The resulting allocation formula arrived at by the Income Tax Bureau was 248 days worked in 1972, of which 62 were worked outside of New York and 186 were worked in New York State. A Notice of Deficiency dated January 26, 1976 was issued in the amount of \$1,088.70 additional personal income tax due, plus \$227.28 interest, for a total sum of \$1,315.98.

2. Petitioner, Jerry Glynn, was a resident of Connecticut during 1972. He was president of Major Markets Radio, Inc. which was located in New York State. On October 11, 1972, petitioner, Jerry Glynn, resigned as president of Major Markets Radio, Inc. and was retained as an independent consultant by said corporation for the balance of the year and thereafter. Petitioner, Jerry Glynn, was paid \$12,500.00 for his services as a consultant in 1972 and worked out of an office maintained in his Connecticut home.

3. Petitioner, Jerry Glynn, contended that up to October 11, 1972, days worked at home were to be considered as days worked in New York State for allocation purposes. After October 11, 1972, because of his status as an independent contractor, days worked at home were to be considered days worked out of New York State.

4. At the hearing, the Income Tax Bureau conceded that petitioner, Jerry Glynn, was an independent contractor for the period October 12, 1972 to December 31, 1972, and that income from his services as such were allocable. The Income Tax Bureau took issue with the allocation of days worked at home during the last quarter of 1972 as allocable to outside of New York source income because this would afford an unfair advantage over a New York resident in similar circumstances.

CONCLUSIONS OF LAW

A. That petitioner, Jerry Glynn, was an employee from January 1, 1972 to October 11, 1972, and days worked at home are considered days worked in New York State for purposes of allocation of income in accordance with the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.16.

B. That petitioner, Jerry Glynn, was an independent contractor from October 12, 1972 to December 31, 1972, with an office in Connecticut and that days worked at said office are considered days worked out of New York State for purposes of allocation of income in accordance with the meaning and intent of section 707 of the Tax Law.

C. That the correct allocation formula for the period up to October 11, 1972 is:

$$\frac{139 \text{ days worked in New York}}{200 \text{ total days worked}} \times \underline{\$41,064.00} = \$28,539.48$$

That the correct allocation formula for the period October 12, 1972 is:

$$\frac{9 \text{ days worked in New York}}{48 \text{ total days worked}} \times \underline{\$12,075.00} = \$ 2,264.06$$


Total 1972 New York Income \$30,803.54

D. That the Income Tax Bureau is instructed to recompute the deficiency based on a total New York income for 1972 in the amount of \$30,803.54.

E. That the petition of Jerry and Dolores B. Glynn is denied only to the extent as to recomputation of total New York income and is in all other respects granted.

DATED: Albany, New York
March 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER