

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH GREEN & EDITH GREEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (a) 22 of the :
Tax Law for the Year (s) ~~XXXXXX~~ 1972 :
~~XXXXXX~~

State of New York
County of Albany

Violet Walker, 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 14th day of June, 1977, she served the within

Notice of Decision by (certified) mail upon Joseph Green &

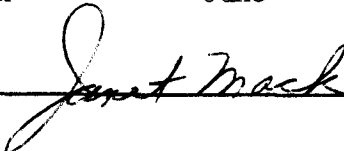
Edith Green ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Joseph Green
P.O. Box 116
Captiva, Florida 33924

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)~~
~~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

14th day of June, 1977.



Janet Mack



Violet Walker

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH GREEN & EDITH GREEN

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) OR PERIOD(S)~~ :
1972.

State of New York
County of Albany

Violet Walker

, 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 14th day of June , 1977 , she served the within

Notice of Decision by (certified) mail upon Robert E. Schulman, CPA

(representative of) the petitioner in the within proceeding,

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

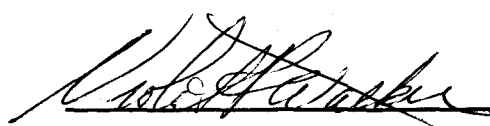
as follows: Robert E. Schulman, CPA
30 East 42nd Street
New York, New York 10017

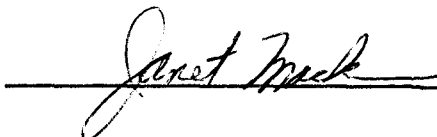
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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 June , 1977.







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 14, 1977

TELEPHONE: (518) 457-1723

Mr. & Mrs. Joseph Green
P.O. Box 116
Captiva, Florida 33924

Dear Mr. & Mrs. Green:

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

Please take further notice that pursuant to
Section ~~601~~ **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	:	
	:	
JOSEPH GREEN and EDITH GREEN	:	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, Joseph Green and Edith Green, Post Office Box 116, Captiva, Florida 33924, 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. 11493).

A formal hearing was scheduled at the offices of the State Tax Commission, Two World Trade Center, New York, New York, for January 13, 1977, at 2:45 P.M. On January 20, 1977, petitioners' representative, Robert Schulman, CPA, waived a formal hearing and requested that the State Tax Commission render a decision upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Whether income derived from the days worked outside New York State by petitioner, Joseph Green, was allocable to sources outside New York State for the year 1972.

FINDINGS OF FACT

1. Petitioners, Joseph Green and Edith Green, filed a New York State nonresident income tax return for the year 1972. They listed \$56,950.00 as total Federal income from wages and \$7,119.00 as total New York State income from wages. They computed the New York State amount by deducting 210 of the 240 workdays of petitioner, Joseph Green, as days worked outside New York State.

2. On January 26, 1976, a Statement of Audit Changes was issued against the petitioners, Joseph Green and Edith Green, imposing additional personal income tax upon the grounds that the days worked at home were not a proper basis for determining days worked outside New York State. The additional tax imposed was \$5,887.24, plus \$1,229.06 in interest, for a total of \$7,116.30. Accordingly, a Notice of Deficiency in this amount was issued against the petitioners.

3. During the period in issue, petitioner, Joseph Green, worked for Oil Specialties and Refining Co., Inc., Brooklyn, New York. He conducted sales and marketing activities in the southeastern United States, and spent 30 days working at the company's Brooklyn office.

4. No documentary or other substantial evidence was offered to apportion between the days worked at home and other days worked outside New York State by the petitioner, Joseph Green.

5. No documentary or other substantial evidence was offered that petitioner, Joseph Green's activities in his Florida home were for the actual necessity of the employer, as distinguished from the convenience of the petitioner.

6. Petitioners, Joseph Green and Edith Green, were residents of Florida during the period in issue. He conducted all of his business activities from his home in Florida.

CONCLUSIONS OF LAW

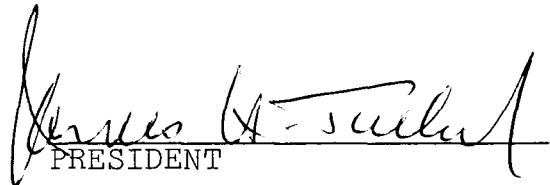
A. That no documentary or other substantial evidence was offered to apportion days worked at home and days worked outside of his home, but not in New York State by petitioner, Joseph Green. Therefore, all days worked outside New York State during the year 1972 are deemed to have been worked at home.

B. That no documentary or other substantial evidence was offered to show that days worked at home by petitioner, Joseph Green, were for the actual necessity of his employer, as distinguished from his own convenience. Therefore, the days worked at home by the petitioner are all allocable as producing income derived from New York State sources, within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.16.

C. That the petition of Joseph Green and Edith Green is denied and the Notice of Deficiency issued January 26, 1976 is sustained.

DATED: Albany, New York
June 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER