

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERT L. and BEBE S. GROSS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (8) 22 of the :  
Tax Law for the Year (1973) 1973 :

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 18th day of January , 1977 , he served the within  
Notice of Decision by (certified) mail upon Herbert L. and Bebe S.  
Gross (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Herbert L. & Bebe S. Gross  
64 Fielding Court  
South Orange, N.J. 07079  
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

18th day of January , 19 77

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

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

January 18, 1977

Herbert L. & Bebe S. Gross  
64 Fielding Court  
South Orange, N.J. 07079

Dear Mr. & Mrs. Gross:

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

Please take further notice that pursuant to  
Section(x) **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*  
**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HERBERT L. and BEBE S. GROSS	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Year 1973.	:	

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Petitioners, Herbert L. and Bebe S. Gross, 64 Fielding Court, South Orange, New Jersey 07079, filed a petition for redetermination of a deficiency or for a refund of personal income tax under Article 22 of the Tax Law for the year 1973. (File No. 3-43010854).

A small claims hearing was held before Joseph Marcus, Small Claims Hearing Officer, at the offices of the State Tax Commisison, Two World Trade Center, Room 6531, New York, New York, on July 14, 1976 at 9:15 A.M. Petitioner, Herbert L. Gross, appeared pro se, and for his wife, petitioner, Bebe S. Gross. The Income Tax Bureau was represented by Peter Crotty, Esq., (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether days worked at home in New Jersey by petitioner, Herbert L. Gross, during 1973 were allocable as days worked outside New York State.

FINDINGS OF FACT

1. Petitioner, Herbert L. Gross, a resident of New Jersey, was employed by Fischbach, McCoach & Associates, Inc., management consultants, 30 East 42nd Street, New York, New York 10017. In 1973, he received wages of \$24,040.00.

2. Petitioner timely filed a New York State income tax return (IT 203) for the year 1973. On November 24, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, imposing personal income taxes. The changes were based on the Bureau's disallowance of petitioner's allocation of income based on days worked at home as days worked outside of New York State. In accordance with the aforementioned Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$1,084.50, including interest.

3. The evidence indicated that all of the out-of-state work performed by petitioner in 1973, was performed at petitioner's home in New Jersey.

4. Petitioner testified that the overriding considerations for working at home were twofold. He stated that by working at home he saved himself the time and cost of commutation. He also indicated that under his terms of employment, he was required to perform his services at whatever location best conformed to the needs of the work.

5. Although petitioner's employer, in a letter addressed to the Income Tax Bureau, dated April 1, 1975, stated that the requirement to work at home was one of the terms of employment, it was never

suggested that the work could not be done at the employer's office. Since the work consisted largely of compilation and analysis of data developed by the petitioner and other members of the firm, there was no demonstration that this work, of necessity, had to be done at the petitioner's home in New Jersey.

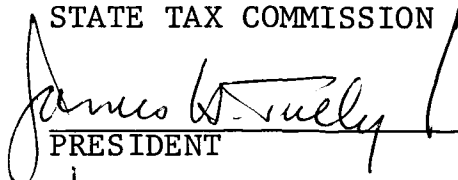
CONCLUSIONS OF LAW

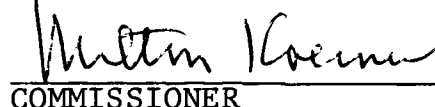
A. That petitioner, Herbert L. Gross, did not perform services for his employer outside of New York State out of necessity. These services were performed there for his greater convenience, and the income derived therefrom constitutes income attributable to New York State sources within the meaning and intent of section 632(c) of the Tax Law. The nature of petitioner's work was such that it could have been done at the office facilities of the employer in New York City.

B. That the petition of Herbert L. and Bebe S. Gross is denied and the Notice of Deficiency issued for the year 1973 is sustained.

DATED: Albany, New York  
January 18, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER