

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

E. WALN HARE AND JEAN G. HARE

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) ~~xxxxxx~~ (s)
1969 and 1970.

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 22nd day of August, 1977, she served the within Notice of Decision by (certified) mail upon E. Waln & Jean G. Hare

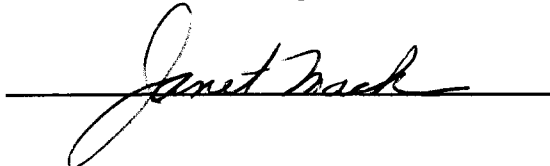
(~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. E. Waln Hare
P.O. Box 1373
Tubac, Arizona 85640

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~~) (~~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
22nd day of August, 1977.


Marsina Donnini


Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

E. WALN HARE AND JEAN G. HARE

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)~~
1969 and 1970.

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 22nd day of August, 1977, she served the within Notice of Decision by (certified) mail upon Morton N. Molotsky

(representative of) the petitioner in the within proceeding,

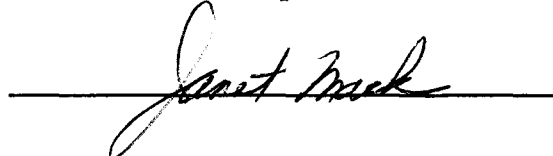
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:
Morton N. Molotsky, CPA
Molotsky and Company
Suite 435, One Palmer Square
Princeton, New Jersey 08540

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
22nd day of August, 1977.







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

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

August 22, 1977

**Mr. & Mrs. E. Wain Hare
P.O. Box 1373
Tubac, Arizona 85640**


Dear Mr. & Mrs. Hare:

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 **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,


**Paul B. Coburn
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
E. WALN HARE AND JEAN G. HARE :
for Redetermination of a Deficiency or : DECISION
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1969 and 1970. :

Petitioners, E. Waln Hare and Jean G. Hare, P.O. Box 1373, Tubac, Arizona 85640, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969 and 1970. (File No. 13216).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 20, 1977 at 1:15 P.M. Petitioners appeared by Morton N. Molotsky, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether income received by petitioner, E. Waln Hare, a non-resident, from Channing Company, Inc. during the years 1969 and 1970, was allocable within and without New York State based on his efforts and those of men working for him.

FINDINGS OF FACT

1. Petitioner, E. Waln Hare and Jean G. Hare, filed New York State income tax nonresident returns for the years 1969 and 1970. On the wage and tax statement for 1969 which was attached to the 1969 return, total wages paid by the employer, Channing Co., Inc., were stated to be \$214,872.46. New York gross wages were stated thereon to be \$46,981.85. This latter figure was used in computing the allocation of wages and salary income to New York, based on a total of 239 days worked during the year, 190 of which were worked in New York. Petitioners' return indicated a refund due of \$5,650.49, which amount was refunded. The 1970 return indicated wages paid of \$71,992.83, \$18,413.99 being attributable to New York, which amount was used in computing the allocation of wages which resulted in the sum of \$14,243.22 being stated as the New York income subject to adjustment and deductions. The allocation was based on 234 days worked, 181 of which were worked in New York. Petitioners demanded a refund of \$1,916.01 for the year 1970.

2. On February 24, 1975, the Income Tax Bureau issued a Statement of Audit Changes to petitioners, E. Waln Hare and Jean G. Hare, his wife, stating additional personal income tax due for the years 1969 and 1970 of \$17,492.85, with interest to that date of \$5,026.13. The statement was based on a March 14, 1974 Decision of the State Tax Commission regarding personal income taxes of the petitioners herein for the years 1966, 1967 and

1968, and the tax stated to be due in the instant matter is computed in accordance with that decision. Accordingly, a Notice of Deficiency was issued on February 24, 1975 in the sum of \$17,492.85, plus interest to that date of \$5,026.13.

3. Petitioners, E. Waln Hare and Jean G. Hare, were residents of the State of New Jersey during the years 1969 and 1970. They resided in a home located on Pheasant Hill Road, Princeton, New Jersey.

4. During the years 1969 and 1970 petitioner, E. Waln Hare, was a vice-president for Channing Company, Inc. which was the national distributor of seven Channing mutual funds. Distribution of these mutual funds by Channing Company, Inc. was made through investment of brokerage firms, by wholesale sales representatives compensated by commissions on sales made in their assigned sales territories. These sales representatives were known as "regional wholesale vice-presidents." Petitioner was responsible for the supervision of the regional wholesale vice-presidents throughout the United States and Europe. He received an override commission on their sales. Petitioner also acted as a wholesale representative in territories not covered by regional wholesalers. He received a commission at a stipulated rate on sales made in these territories. The essential nature of his duties was to encourage sales by personal visitation to dealers offices and to conduct

sales meetings. The actual sales of the mutual funds were made by the investment or brokerage houses as dealers to their customers. The sales were not made directly by petitioner either in his supervisory capacity or in his capacity as a wholesale representative.

5. In 1969, the main office of Channing Company, Inc. was located in Battle Creek, Michigan, and was moved to Houston, Texas in 1970. It maintained a branch office at 280 Park Avenue, New York, New York. Petitioner, E. Waln Hare, was provided with an office at said premises which was the principal place from which he worked. He maintained a secretary at said premises and paid her salary. He bore all of his own expenses with the exception of the office space.

6. Petitioner, E. Waln Hare, worked for his employer, Channing Company, Inc., a total of 239 days during the year 1969, of which total 49 days were worked outside New York State. He worked a total of 234 days during the year 1970, of which total 53 days were worked outside New York State.

CONCLUSIONS OF LAW

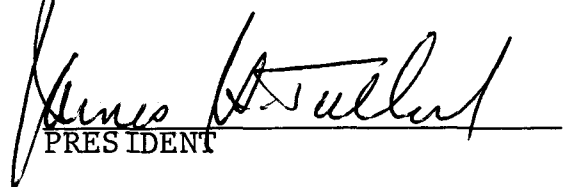
A. That section 632 of the Tax Law provides that the New York adjusted gross income and deductions of a nonresident individual from an occupation carried on partly within and partly without New York State shall be determined by apportionment and allocation under regulations of the Tax Commission.

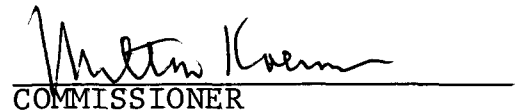
B. That the compensation received by petitioner, E. Waln Hare, a nonresident of the State of New York, from his employer, Channing Company, Inc., during the years 1969 and 1970, did not depend directly upon the volume of business transacted by him and, therefore, he was not entitled to allocate this compensation based upon the volume of business transacted within and without New York State as provided for under 20 NYCRR 131.16.

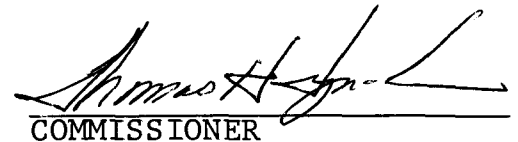
C. That the petition of E. Waln Hare and Jean G. Hare is denied and the Notice of Deficiency issued February 24, 1975 is sustained.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER