

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM H. HUTHER and ALLISON HUTHER
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(s) ~~or Period(s)~~
1969 and 1970

AFFIDAVIT OF MAILING

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 8th day of April, 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon William H. Huther and
Allison Huther ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. William H. Huther
43 Laurel Ledge 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)~~
~~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
8th day of April, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM H. HUTHER and ALLISON HUTHER

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~~ or ~~Period(s)~~ :
1969 and 1970

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 8th day of April , 19 77, she served the within
Notice of Decision by (certified) mail upon Richard J. Duffy, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Mr. Richard J. Duffy, Esq.
as follows: Rockwood, Edelstein & Shaw
Counselors at Law
320 Chappaqua Road
Briarcliff Manor, New York 10510
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

8th day of April , 1977.

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
April 8, 1977

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-1723

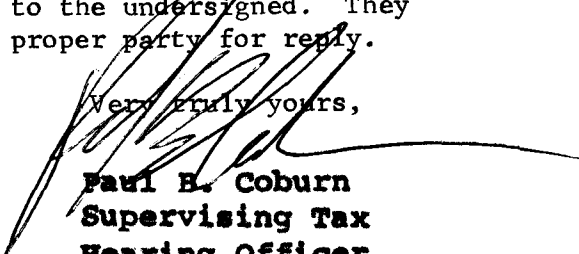
Mr. and Mrs. William H. Huther
43 Laurel Ledge Road
Stamford, Conn. 06903

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,


Paul H. 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 :
WILLIAM H. HUTHER and ALLISON HUTHER : DECISION
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. :

Petitioners, William H. Huther and Allison Huther,
of 43 Laurel Ledge Road, Stamford, Connecticut 06903, 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. 0001279).

A formal hearing was held before Edward L. Johnson,
Hearing Officer, at the offices of the State Tax Commission,
Two World Trade Center, New York, New York, on July 16, 1976
at 9:30 A.M. The petitioners appeared by Richard J. Duffy, Esq.
The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander
Weiss, Esq., of counsel).

ISSUES

I. Whether petitioners, William H. Huther and Allison
Huther, properly allocated days worked at home in the years
1969 and 1970.

II. Whether petitioners, William H. Huther and Allison Huther, properly allocated income from sources outside of New York State in the years 1969 and 1970.

FINDINGS OF FACT

1. Petitioners, William H. and Allison Huther, filed a New York State nonresident income tax return for the year 1969. Petitioner, William H. Huther, listed his work days as 241, and allocated 137 days as days worked outside New York State. Petitioners listed total New York State income as \$19,013.00, while listing total Federal income as \$31,812.00.

2. Petitioners, William H. and Allison Huther, filed a New York State nonresident tax return for the year 1970. Petitioner, William H. Huther, listed his workdays as 241, and allocated 161 days as days worked outside New York State. Petitioners listed their total New York State income as \$9,964.00, while listing total Federal income as \$27,416.00.

3. On February 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, William H. and Allison Huther. It imposed additional income tax for the year 1969, consisting of a \$1,744.88 deficiency, plus \$299.77 in interest, totalling \$2,044.65, upon the grounds that the entire income for the year in issue was New York State income. Accordingly, a Notice of Deficiency was issued with the aforesaid Statement of Audit Changes.

4. On February 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, William H. and Allison Huther, imposing additional income tax for the year 1970, consisting of a \$641.08 deficiency, plus \$71.67 in interest, totalling \$712.75, upon the grounds that time spent at home is not a proper basis for allocating income from wages. A Notice of Deficiency was accordingly issued.

5. Petitioners, William H. and Allison Huther, were residents of Connecticut during the years in issue.

6. Petitioner, William H. Huther, was employed by Cambridge Computer, Inc. from January 1, 1969 until September 5, 1970. His services were terminated by Cambridge Computer, Inc. on May 13, 1970, effective September 5, 1970.

7. There was office space available for Mr. Huther at Cambridge Computer, Inc., and any time worked at home by Mr. Huther was for his convenience, and not for the actual necessity of Cambridge Computer, Inc., during the period January 1, 1969 to September 5, 1970.

8. Cambridge Computer, Inc. withheld tax for petitioner, William H. Huther, during all the period January 1, 1969 to September 5, 1970.

9. The salary received by William H. Huther from Cambridge Computer, Inc., during the period May 13, 1970 to September 5, 1970, was for past services rendered as per the contractual agreement between the two parties.

10. Petitioner, William H. Huther, was employed by Leasco Systems Corporation from September 5, 1970 to the end of that year.

11. Petitioner, William H. Huther, worked 241 days in 1969, of which 15 days were allocable as days worked outside of New York State, but not at home.

12. Petitioner, William H. Huther, offered no documentary or other substantial evidence as to days allocable as being worked outside New York State but not at home in 1970.

CONCLUSIONS OF LAW

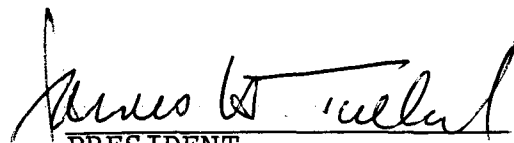
A. That since the days worked at home by petitioner, William H. Huther, for Cambridge Computer, Inc., were for his convenience and were not for the actual necessity of Cambridge Computer, Inc., these days were not allocable as days worked outside New York State, within the meaning and intent of section 632(b)(1)(B) of the Tax Law and 20 NYCRR 131.16.

B. That, since the income received by petitioner, William H. Huther, from Cambridge Computer, Inc., during the period May 13, 1970 to September 5, 1970, was for past services rendered as per contractual agreement between the two parties, therefore, said income is allocable to New York State sources within the meaning and intent of section 632(b)(1)(B) of the Tax Law.

C. That the petition of William H. Huther and Allison Huther is granted to the extent that 15 of 241 workdays for the year 1969 were allocable as days worked outside New York State; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued February 26, 1973; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
April 8, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER