

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JOHN V. and AUDREY S. McDERMOTT

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~~) ~~Period(s)~~ 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 8th day of April, 1977, ~~she~~ served the within  
Notice of Decision by (certified) mail upon John V. and Audrey S.  
McDermott (~~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. John V. McDermott  
20 North Star Road  
Closter, New Jersey 07624

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 [Signature]



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

April 8, 1977

TELEPHONE: (518) 457-1723

Mr. & Mrs. John V. McDermott  
20 North Star Road  
Closter, New Jersey 07624

Dear Mr. & Mrs. McDermott:

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

Please take further notice that pursuant to  
Section(~~§~~ **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: ~~Division of Administration~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
JOHN V. and AUDREY S. McDERMOTT  
for Redetermination of a Deficiency or  
for Refund of Personal Income Taxes  
under Article 22 of the Tax Law for the  
Year 1972.

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DECISION

Petitioners, John V. and Audrey S. McDermott, residing at 20 North Star Road, Closter, New Jersey 07624, 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. 2-23252435).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on September 20, 1976 at 1:15 p.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by John V. McDermott, Jr. and for his wife, petitioner, Audrey S. McDermott. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq. of counsel).

ISSUE

Whether the days worked at home in New Jersey during 1972 by petitioner, John V. McDermott, constituted days worked outside New York State.

FINDINGS OF FACT

1. Petitioners, John V. and Audrey S. McDermott, timely filed a New York State nonresident return for the year 1972. They allocated the income received by petitioner, John V. McDermott, as to days worked within and without New York State.

2. On August 25, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, John V. and Audrey S. McDermott, disallowing the allocation of petitioner, John V. McDermott's income upon the grounds that days worked at home are not recognized as proper basis for allocation of income to New York State. The Income Tax Bureau contended that the petitioners' total New York income for 1972 was \$30,846.00 rather than the amount reported of \$24,637.39. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$758.78.

3. Petitioners, John V. and Audrey S. McDermott, were residents of the State of New Jersey during the year 1972.

4. Petitioner, John V. McDermott, was employed by the Ford Foundation as an assistant to the comptroller. The above said foundation is located in New York City.

5. Petitioner, John V. McDermott, underwent surgery on December 15, 1971. He was advised by his physician to stay at home

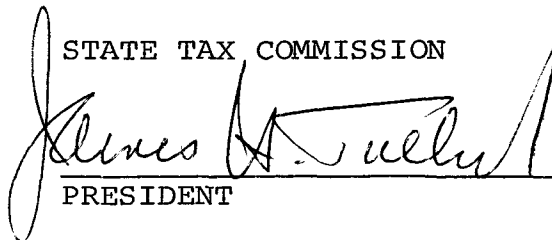
to recuperate through the months of January and February, 1972. While at home recuperating, the petitioner, John V. McDermott, worked out of his home for the Ford Foundation. The income received by the petitioner, John V. McDermott, from the Ford Foundation during 1972 was not considered sick pay.

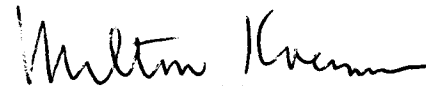
CONCLUSIONS OF LAW

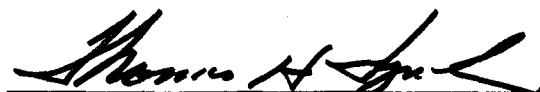
A. That the days worked at home in New Jersey by petitioner, John V. McDermott, during the year 1972 were worked there by reason of his necessity and convenience and not for the convenience of his employer; and, therefore, said time cannot be considered to be days worked outside of New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

B. That the petition of John V. and Audrey S. McDermott is denied and the Notice of Deficiency issued on August 25, 1975 is sustained.

DATED: Albany, New York  
April 8, 1977

STATE TAX COMMISSION  
  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER