

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DONALD R. MECKSTROTH

and

MARGARET R. MECKSTROTH

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 ~~(or~~ ~~Period(s)~~ 1970.

AFFIDAVIT OF MAILING

State of New York
County of Albany

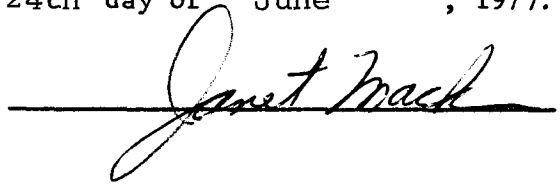
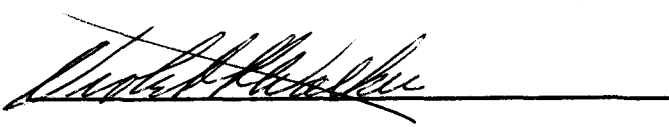
Violet Walker, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of June, 1977, she served the within Notice of Decision by (certified) mail upon Donald R. & Margaret R. Meckstroth (~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Donald R. Meckstroth
3025 Glengary Road
Shaker Heights, Ohio 44120

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
24th day of June, 1977.



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DONALD R. MECKSTROTH	:	
and	:	DECISION
MARGARET R. MECKSTROTH	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

Petitioners, Donald R. Meckstroth and Margaret R. Meckstroth, 3025 Glengary Road, Shaker Heights, Ohio 44120, 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 1970. (File No. 01883)

A formal hearing was scheduled at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York for April 9, 1974 at 11:30 a.m. On April 3, 1974, petitioners waived a formal hearing and requested that the State Tax Commission decide the case upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Whether the days worked at home, in New Jersey, by the petitioner, Donald R. Meckstroth, produced income allocable to sources outside New York State during the period from October 12, 1970 to December 31, 1970.

FINDINGS OF FACT

1. Petitioners, Donald R. Meckstroth and Margaret R. Meckstroth, filed a New York State nonresident income tax return for the year 1970. They listed \$60,297.00 as Federal income from wages and \$31,274.00 as New York State income. The New York State income was computed by deducting 116 days, from the 241 total work days listed, as days worked outside New York State.

2. On May 21, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners, Donald R. Meckstroth and Margaret R. Meckstroth, imposing additional income tax of \$2,187.32, plus \$275.56 in interest, upon the grounds that time spent at a taxpayer's home is not a recognized basis for allocation of wages or salary outside New York State. Accordingly, a Notice of Deficiency was issued totalling \$2,462.88.

3. The petitioner, Donald R. Meckstroth, concedes that the days he worked at home in New Jersey during the period of

January 1, 1970 through October 11, 1970 were not allocable to sources outside New York State.

4. Petitioner, Donald R. Meckstroth, was employed by American Standard, Inc. for the entire year of 1970. He had the title of "Group Executive" for the period January 1, 1970 through October 11, 1970, and the title of "Internal Consultant" from October 12, 1970 through December 31, 1970. However, he was an employee and not a consultant for the latter period.

5. The petitioners, Donald R. Meckstroth and Margaret R. Meckstroth, offered no documentary or other substantial evidence that an office could not have been provided in New York State or that the work performed at home in New Jersey by Donald R. Meckstroth, for American Standard, Inc., was for actual necessity as opposed to the convenience of the employee.

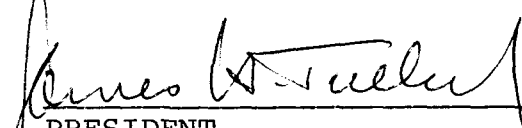
CONCLUSIONS OF LAW

A. That since the days worked at home in New Jersey, by the petitioner, Donald R. Meckstroth, were for his convenience as an employee as opposed to the actual necessity of the employer, therefore, these days were not allocable to sources outside New York State for the period October 12, 1970 through December 31, 1970.

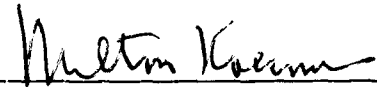
B. That the petition of Donald R. Meckstroth and Margaret R. Meckstroth is denied and the Notice of Deficiency issued May 21, 1973 is sustained.

DATED: Albany, New York
June 24, 1977

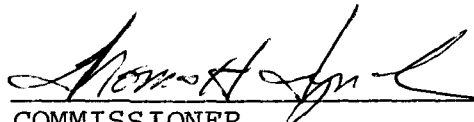
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER