

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GUSTAVE H. RATHE, JR. & IRENE A. RATHE

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 (xxxxxx) Period (xx)
1971

State of New York
County of Albany

John Huhn, 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 29th day of September, 1977, she served the within

Notice of Decision by (certified) mail upon Gustave H. Rathe, Jr. &

Irene A. Rathe ~~(xxxxxx)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

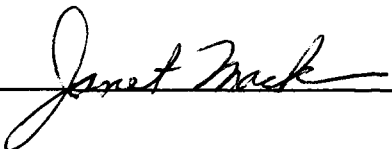
as follows: Mr. & Mrs. Gustave H. Rathe, Jr.
Suite 716 - 7701 Stemmons Freeway
Dallas, Texas 75247

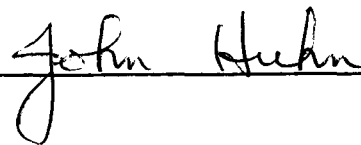
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(xxxxxx)~~
~~(xxxxxx)~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(xxxxxx)~~ petitioner.

Sworn to before me this

29th day of September, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GUSTAVE H. RATHE, JR. & IRENE A. RATHE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income

Taxes under Article ~~(E)~~ 22 of the
Tax Law for the Year ~~(E)XXXXXX(E)~~
1971

State of New York
County of Albany

John Huhn, 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 29th day of September, 1977, she served the within
Notice of Decision by (certified) mail upon Robert Berlingo, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

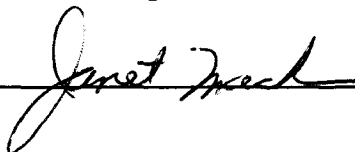
as follows: Robert Berlingo, CPA
c/o Richard F. Walter & Co.
Box 3425 80 Prospect St.
Stamford, Conn. 06905

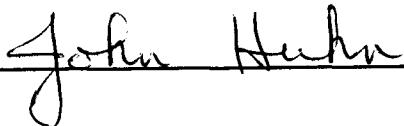
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

29th day of September, 1977.







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

September 29, 1977

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

Mr. & Mrs. Gustave H. Rathe, Jr.
Suite 716 - 7701 Stemmons Freeway
Dallas, Texas, 75247

Dear Mr. & Mrs. Rathe:

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 **(d) 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,

JOSEPH CHIRIWATY
HEARING EXAMINER

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GUSTAVE H. RATHE, JR. and IRENE A. RATHE
for Redetermination of a Deficiency or for Refund
of Personal Income Tax under Article 22 of the
Tax Law for the Year 1971.

DECISION

Petitioners, Gustave H. Rathe, Jr. and Irene A. Rathe, 7701 Stemmons Freeway, Suite 716, Dallas, Texas 75247, 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 1971 (File No. 16513).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on April 27, 1977 at 2:45 p.m. The petitioners appeared by Robert Berlingo, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (James J. Morris, Esq., of counsel).

ISSUE

Whether the days on which petitioner Gustave H. Rathe, Jr. worked at his Connecticut home constituted days worked outside New York State for New York State income tax allocation purposes.

FINDINGS OF FACT

1. Petitioners, Gustave H. Rathe, Jr. and Irene A. Rathe, filed a New York State income tax nonresident return for the year 1971.

2. Petitioner Gustave H. Rathe, Jr. allocated 106 days as days worked without New York State, of which 52 were days on which he worked at his Connecticut home.

3. On August 30, 1976, the Income Tax Bureau issued a Notice of Deficiency for the year 1971 against petitioners, Gustave H. Rathe, Jr. and Irene A. Rathe, in the amount of \$1,249.91, upon the grounds that the 52 days worked at home were improperly allocated as days worked without New York State.

4. Petitioners were residents of the State of Connecticut during the year 1971.

5. During the year 1971, petitioner Gustave H. Rathe, Jr. was employed by International Business Machines Corporation, which maintained offices in New York State. In connection with his employment with said corporation, he conducted research at his Connecticut home, where he maintained a personal research library.

6. Although International Business Machines Corporation had ample facilities at its New York office to establish a research library for the use of petitioner Gustave H. Rathe, Jr., it did not maintain such library at that location.

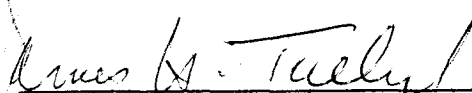
CONCLUSIONS OF LAW

A. That the 52 days on which petitioner Gustave H. Rathe, Jr. worked at his Connecticut home during the year 1971, were worked there by reason of his convenience and not by reason of the necessity of his employer. Therefore, said 52 days constituted days worked within New York State for purposes of income allocation within the meaning and intent of section 632 (c) of the Tax Law and 20 NYCRR 131.16.

B. That the petition of Gustave H. Rathe, Jr. and Irene A. Rathe is denied and the Notice of Deficiency issued on August 30, 1976 is sustained.

DATED: Albany, New York
September 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER