

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ANNA L. SOUTHAM

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 ~~(XXXXXX)~~ 1971 :

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 22 day of July, 1977, she served the within Notice of Decision by (certified) mail upon Anna L. Southam

~~(representative of)~~ the petitioner in the within proceeding,

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

as follows: Dr. Anna L. Southam
50 Orchard Road
Demarest, New Jersey 07627

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
22 day of July, 1977.

Marsina Donnini

Jant Mack



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

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

July 22, 1977

Dr. Anna L. Southam
50 Orchard Road
Demarest, New Jersey 07627

Dear Dr. Southam:

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 ~~(x)~~ **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 Chyrywat
Hearing Examiner

cc: ~~Dr. Anna L. Southam~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ANNA L. SOUTHAM
for Redetermination of a Deficiency or for
Refund of Personal Income Taxes under
Article 22 of the Tax Law for the Year 1971.

DECISION

Petitioner, Anna L. Southam, residing at 50 Orchard Road, Demarest, New Jersey 07627, has 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 1971. (File No. 13671).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on September 16, 1976 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (A. Schwartz, Esq., of counsel).

ISSUE

Whether days worked at home should be considered as days worked outside the State of New York for income allocation purposes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Anna L. Southam, is a resident of the State of New Jersey, who is employed in New York State by the Ford Foundation as a program officer.

2. During the year 1971, the petitioner became ill and was unable to perform her duties at the employer's place of business in New York.

3. Upon recommendation of her doctor, and with the approval of her employer, petitioner performed her duties at home for a period of 54 days during 1971.

4. Petitioner counted the 54 days on which she worked at home as days worked outside New York State in the allocation of wages reported on her 1971 New York State nonresident income tax return.

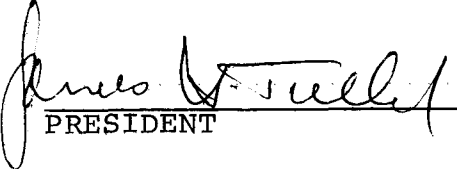
5. The Income Tax Bureau adjusted the amount of petitioner's income subject to allocation for the year 1971, counted the days worked at home as days worked in New York State for income allocation purposes and issued a Notice of Deficiency against the petitioner on the basis of the foregoing adjustments.

6. Services performed at home for health reasons cannot be considered as days worked outside the State of New York for the necessity of the employer. (Matter of Churchill v. Gallman, 38AD 2d 631.) Accordingly, days worked at home must be considered as days worked in New York State within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

7. The petition of Anna L. Southam is denied and the Notice of Deficiency issued November 26, 1973 in the sum of \$708.53 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
July 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER