

STATE OF NEW YORK,  
STATE TAX COMMISSION

In the Matter of the Petition

of  
LEO and DORIS R. TERR

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)~~ 1972:

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of March , 1977, he served the within  
Notice of Decision by (certified) mail upon Leo and Doris R. Terr

~~(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. Leo Terr  
11 Carlton Road  
Metuchen, New Jersey 08840

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~~  
~~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

4th day of March , 1977

Bruce Batchelor

Not Public



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 4, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Leo Terr  
11 Carlton Road  
Metuchen, New Jersey 08840

Dear Mr. & Mrs. Terr:

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

Please take further notice that pursuant to  
Section **(a) 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: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
LEO and DORIS R. TERR	:	DECISION
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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Petitioners, Leo and Doris R. Terr, residing at 11 Carlton Road, Metuchen, New Jersey 08840, 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. 2-27008538).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on August 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 and for his wife, petitioner, Doris R. Terr. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

#### ISSUE

Whether the allocation of days worked within and without New York State by petitioners, Leo and Doris R. Terr, for the year 1972 is correct.

FINDINGS OF FACT

1. Petitioners, Leo and Doris R. Terr, filed a New York State nonresident income tax return for the year 1972. They allocated their salary income for said year based upon the number of alleged working days they worked within and without New York State during said year. Petitioner, Leo Terr, claimed that he worked 95 days outside New York State during the year 1972, and petitioner, Doris R. Terr, claimed that she worked 97 days outside of New York State during said year.

2. On October 10, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Leo and Doris R. Terr, imposing additional personal income tax due for the year 1972 upon the grounds that the total salary income of each petitioner was subject to New York tax without allocation and no allocation of such salary income was allowable with respect to nonworking days including holidays, vacation days and sick days as such days were not considered days worked outside New York State. In accordance with the aforesaid statement, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$765.60.

3. Petitioners, Leo and Doris R. Terr, were residents of the State of New Jersey during the year 1972. Petitioner, Leo Terr, was employed by the Internal Revenue Service as an internal revenue agent stationed in New York during said year. Petitioner, Doris R. Terr, was employed by the City of New York, Board of Education working in New York City during said year.

4. The allocation claimed for said year, by petitioner, Leo Terr, used 95 days as days worked outside New York State. The 95 days claimed as days worked outside New York State consisted of 55 working days and holidays, vacation days and sick days totaling an additional 40 days. The 55 days worked outside New York State included six days worked at the petitioner's home and 49 days, of which six were Saturdays and Sundays worked other than at his home.

5. The allocation claimed by petitioner, Doris R. Terr, for said year used 97 days as days worked outside New York State, which consisted entirely of holidays, vacation days and sick days.

#### CONCLUSIONS OF LAW

A. That the 97 days claimed by petitioner, Doris R. Terr, as days worked outside New York State during the year 1972 are not considered days worked outside 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 of the 95 days claimed by petitioner, Leo Terr, as days worked outside New York State during the year 1972, the 40 nonworking days and the six days worked at home are not considered days worked outside New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.


C. That the petition of Leo and Doris R. Terr is granted to the extent that the salary of petitioner, Leo Terr, is to

be apportioned based on a total of 226 days worked, of which 49 days must be held as days worked outside New York State and 177 days to be held as worked in New York State.

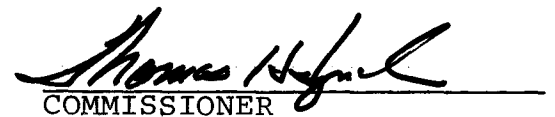
D. That the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued July 28, 1975; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
March 4, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER