

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS WEINBERG and ISABELLA WEINBERG

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) ~~xxx Period(x)~~ :
1969, 1970 and 1971.

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 Louis Weinberg & Isabella Weinberg ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

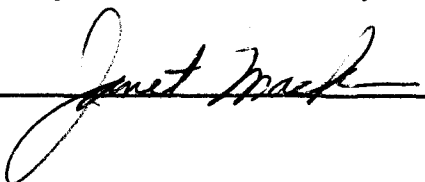
Mr. & Mrs. Louis Weinberg
11 Woodland Street
Tenafly, New Jersey 07670

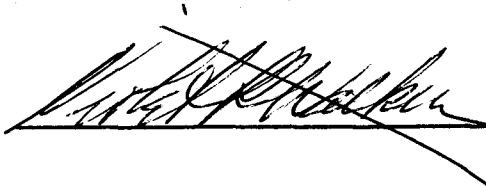
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

June 24, 1977

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

Mr. & Mrs. Louis Weinberg
11 Woodland Street
Tenafly, New Jersey 07670

Dear Mr. & Mrs. Weinberg:

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

Please take further notice that pursuant to
Section(3) **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,

Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
Taxpayer's Representative

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
LOUIS WEINBERG AND ISABELLA WEINBERG :
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1969, 1970 and 1971. :

DECISION

Louis Weinberg and Isabella Weinberg, 11 Woodland Street, Tenafly, New Jersey 07670, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969 and 1970, and from denial of a portion of a refund claimed for 1971. (File No. 00065).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 6, 1975 at 1:30 P.M. Petitioner, Louis Weinberg, appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether days worked at home in New Jersey during the years 1969, 1970 and 1971 by petitioner, Lewis Weinberg, were allocated as days worked within or days worked without New York State.

II. Whether the Income Tax Bureau properly disallowed the subtraction of \$1,165.00 claimed as a refund of New York State and New York City income taxes.

FINDINGS OF FACT

1. The petitioners, Louis Weinberg and Isabella Weinberg, his wife, filed New York State nonresident tax returns for the years 1969, 1970 and 1971. They executed a consent, extending to April 15, 1974, the time to issue an assessment with respect to the year 1969. On October 29, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners for the years 1969 and 1970, disallowing an allocation of days worked at home and imposing additional income tax in the amount of \$1,130.16, plus interest of \$219.09. Accordingly, a Notice of Deficiency was issued totalling \$1,349.25.

2. On their nonresident New York State income tax return for 1971, the petitioners claimed a refund of \$1,514.34. On October 29, 1973, the Income Tax Bureau issued a Statement of Refund Adjustment for the year 1971, denying apportionment on the basis of days worked at home while allowing a refund of only \$1,062.74. It issued a Notice of Deficiency for \$451.60, plus interest of \$41.68, for a total due of \$493.28, which in effect represents the denial of a portion of the refund claimed by petitioners for said year. The refund for the year 1971 was not issued.

3. The petitioners timely filed a petition for redetermination of the deficiencies for the years 1969, 1970 and 1971.

4. The petitioner, Louis Weinberg, is a professor of electrical engineering at City College of New York, City University of New York. He teaches systems theory, circuit theory, networks, synthesis, graft theory and matroids. He teaches two courses, one graduate and the other undergraduate, three times a week. He is provided with an office which occasionally is shared with another person.

5. Professor Weinberg is the author of a book on network theory. In order to maintain his position, it is necessary for him to continue his research.

6. The petitioner, Louis Weinberg, maintains an office at his home in Tenafly, New Jersey, which he uses in connection with the writing of books, scientific articles and activities as chairman of various committees in professional societies, preparing material for lectures and symposia and marking papers. He maintains his books and files in the aforementioned office.

7. On his Federal income tax returns for the years in issue, Professor Weinberg reported on Schedule C, income from royalties on books and fees for scientific articles and lectures.

He deducted depreciation and taxes equivalent to 1/5 of the expense in maintaining his home. He also deducted entertainment expenses. The income reported on the Schedule C for the years in issue was not included in New York income.

8. In addition to his salary or wages as a professor, the petitioner received a grant from City College Research Foundation in the amount of \$5,021.32 for 1969 and \$4,000.00 for the year 1970, respectively. These research grants were considered part of petitioner's salary or wages for said years.

9. The Income Tax Bureau allowed an allocation for days worked outside the state in connection with conferences, but disallowed an allocation for days worked at home.

10. On the 1971 return, the petitioners subtracted New York State income tax (\$1,101.00) and New York City refund (\$64.00), total \$1,165.00 received in 1971 attributable to a prior tax year. The Income Tax Bureau disallowed same on the ground that no evidence was submitted that this amount was included in the income reported in Federal adjusted gross income.

CONCLUSIONS OF LAW

A. That the days worked at home in New Jersey during the years 1969, 1970 and 1971 by the petitioner, Louis Weinberg, were worked there by reason of his necessity and convenience, and not for the necessity and convenience of his employer. Therefore,

said days must be held to be days worked within 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 petitioners are not entitled to deduct for 1971 the refunds of New York State and New York City income tax as more fully set forth in Findings of Fact "10", supra.

C. That the petition of Louis Weinberg and Isabella Weinberg for the years 1969, 1970 and 1971 be and the same is hereby denied; that the refund due the petitioners for the year 1971 plus any interest that may be due thereon be applied towards the deficiency for the years 1969 and 1970.

DATED: Albany, New York
June 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER