

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WILSON WHITE, III AND JOYCE R. WHITE

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(s) ~~or Period(s)~~  
1970 and 1971.

State of New York  
County of Albany

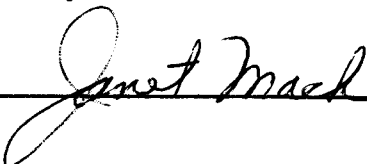
Violet Walker, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of June, 1977, she served the within  
Notice of Decision by (certified) mail upon Wilson White, III &  
Joyce R. White (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. & Mrs. Wilson White, III  
297 Summit Avenue  
Summit, New Jersey 07901

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~~  
~~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.

  
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\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
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Notice of Decision by (certified) mail upon Bruce G. Pritikin

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


Bruce G. Pritikin, Esq.  
Touche Ross & Co.  
Gateway I  
Newark, New Jersey 07102

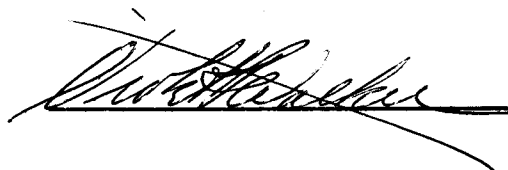
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Sworn to before me this

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\_\_\_\_\_



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

June 24, 1977

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

Mr. & Mrs. Wilson White, III  
297 Summit Avenue  
Summit, New Jersey 07901

Dear Mr. & Mrs. White:

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

Please take further notice that pursuant to  
Section(8) **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 B. Coburn**  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
WILSON WHITE, III AND JOYCE R. WHITE	:	
for Redetermination of a Deficiency or	:	DECISION
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the	:	
Years 1970 and 1971.	:	

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Petitioners, Wilson White, III and Joyce R. White, 297 Summit Avenue, Summit, New Jersey 07901, 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 1970 and 1971. (File No. 11260).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 16, 1976 at 2:45 P.M. Petitioners appeared by Howard J. Menaker, Touche Ross & Co. (Bruce Pritikin, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (James A Scott, Esq., of counsel).

ISSUE

Whether petitioners' allocation of wage and salary income to New York State on their New York income tax nonresident returns for 1970 and 1971 reflect their actual situation.

FINDINGS OF FACT

1. Petitioners, Wilson White, III and Joyce R. White, stated under Schedule A-1 of their Income Tax Nonresident Return for 1970 that out of a total of 218 days worked in that year, 119 days were worked in New York State and 99 days were worked outside New York State. In their return for 1971, petitioners stated under Schedule A-1 that out of a total of 85 days worked in the year, 5 days were worked in New York State and 80 were worked outside New York State.

2. On March 25, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, stating that since they failed to submit information, as requested, the Income Tax Bureau was disallowing petitioners' allocations of wage and income, and that the Bureau was holding all wage income fully taxable to New York. The Income Tax Bureau claimed personal income tax due for the year 1970 of \$2,975.50, and for the year 1971 of \$6,114.56, plus interest.

3. Under date of April 16, 1973, petitioners submitted a statement to the Income Tax Bureau giving the dates of the 99 working days in 1970 claimed to have been worked outside of New York State. Of these 99 days, petitioner Wilson White, III claimed to have worked 5 days in Malibu, 4 days in Chicago, 2 days (June 29, 1970 and June 30, 1970) at unspecified locations and the balance in Newark. At the bottom of the statement appeared

the following: "This time was spent in the preparation of the merger of Wilson White, Inc. (of which Mr. Wilson White was the sole owner) and Tecott, Jackson & Co. of Newark, New Jersey."

4. At the formal hearing, petitioner Wilson White, III testified as follows: That the firm of Wilson White, Inc., of which he was President, had branch offices in Malibu and Chicago. That until August of 1970, he worked mainly at the office of Wilson White, Inc., 74 Trinity Place, New York, New York. That from August 1970 to February 1, 1971, petitioner worked in Newark, New Jersey, in connection with a "trial marriage" merger between the firms of Wilson White, Inc. and Tecott, Jackson & Co., located at 744 Broad Street, Newark, New Jersey. That effective February 1, 1971, following a trial-basis merger of the firms, the two firms formally merged and was then called Tecott, Jackson, Wilson White, Inc., with offices in Newark. That Wilson White, Inc.'s leasehold at 74 Trinity Place terminated on February 1, 1971.

5. A witness for petitioners, Mrs. Margaret Webb, employed by Wilson White, Inc. during 1970, at which time she served as both secretary to the corporation and secretary to Mr. White, testified that she kept a desk calendar on which she would make notations as to Mr. White's whereabouts. The calendar is no longer available. Petitioners' Schedule A-1 would be prepared on the basis of the calendar notations.

6. To substantiate his physical presence in New Jersey during the period in dispute, petitioner, Wilson White, III, introduced as exhibits three trade tickets involving bond transactions which he testified took place at the Newark office in Tecott, Jackson & Co. Each trade ticket is stamped on the back, "Received...Tecott, Jackson & Co." The three trade tickets were selected from a much larger number of trade tickets which petitioner, Wilson White, III, brought to the formal hearing. On a ticket with the trade-date of November 4, 1970 (petitioners' Exhibit 3), petitioner, Wilson White, III, testified that his handwritten initials, "W.W." appeared in ink. As to a ticket with the trade date December 30, 1970 (petitioners' Exhibit 2), petitioner Wilson White, III, testified that the ticket was filled out in his handwriting. As to a ticket with the trade-date of November 19, 1970 (petitioners' Exhibit 1), petitioner, Wilson White, III, testified that he had written the fraction "3/4", representing a commission charge. He further testified that it was an "undeviating procedure" that trade tickets were written only in the office.

7. Subsequent to the formal hearing, petitioners submitted the following:

(a) An affidavit dated January 25, 1977 of Robert P. Douglas, an attorney-at-law in the State of New Jersey and a

partner in the municipal bond firm of Wilson White, Belf, Lake, Rochlin & Co. In his affidavit, Mr. Douglass stated that from December 1, 1968 until the time of the merger with Wilson White on February 1, 1971, he was a partner in the firm of Tecott, Jackson & Co., located in Newark, New Jersey, and that he continued to be a partner in the firm which succeeded Tecott, Jackson & Co. "I make this affidavit," states Mr. Douglas, "to support the position of Wilson White, III working full-time in our offices at 744 Broad Street, Newark, New Jersey from at least October 1, 1970 and thereafter.... To the best of my knowledge, information and belief, Wilson White, III was working in accordance with a 'pre-merger' understanding at the offices of Tecott, Jackson & Co....from October 1, 1970, and thereafter."

(b) An affidavit dated January 25, 1977 of Linda M. Lake, a partner of Wilson White, Belf, Lake, Rochlin & Co. Ms. Lake's affidavit states in part:

"During the year of 1970 and for some time prior thereto, I was employed by Wilson White, Inc. at its offices at 74 Trinity Place, New York, New York.

"I recall that when in 1970 merger discussions were taking place between Wilson White, Inc. and Tecott, Jackson & Co., that no later than October 1, 1970 and continuing thereafter, Wilson White, III no longer worked at 74 Trinity Place, but did work at the offices of Tecott, Jackson & Co. at 744 Broad Street, Newark, New Jersey from October 1, 1970 through January 1, 1971 and continued thereafter to work in Newark, New Jersey when the merger took place and the firm was renamed to Tecott, Jackson, Wilson White & Co."



(c) An affidavit dated January 25, 1977 of Marie Hudson, who is employed by Wilson White, Belf, Lake, Rochlin & Co. Ms. Hudson's affidavit states in part:

"During the year 1970 and for sometime prior thereto, I was employed by Wilson White, Inc. at its offices at 74 Trinity Place, New York, New York.

"To the best of my recollection, Mr. White started working at the offices of Tecott, Jackson & Co. at 744 Broad Street, Newark, New Jersey no later than October 1, 1970 on a full time basis.

"I continued working for Wilson White, Inc. in New York during the balance of 1970 at the offices of Wilson White, Inc. at 74 Trinity Place, New York and recall that Mr. White was not present during that period nor during the month of January, 1971."

(d) An affidavit dated January 25, 1977 of Arthur P. Rochlin, a partner in the firm of Wilson White, Belf, Lake, Rochlin & Co. Mr. Rochlin's affidavit states in part:

"On August 1, 1968, I became a partner in the firm of Tecott, Jackson & Co. and continued to be a partner in the successor firms.

"During the year of 1970 there were discussions concerning the possibility of merging Tecott, Jackson & Co. with Wilson White, Inc. and in the course of these discussions it was agreed that Wilson White, III would work at the Newark office of Tecott, Jackson & Co. full time commencing no later than October 1, 1970. That he did.

"Commencing no later than October 1, 1970 and continuing thereafter, Wilson White, III worked full-time at our office here at 744 Broad Street, Newark New Jersey."

(3) A copy of an undated, unexecuted "Memorandua of Agreement" concerning a proposed merger between Tecott, Jackson

& Co. and Wilson White, Inc., provided by Robert P. Douglass, Esq., from his files. The agreement provides in part:

"This agreement has been formally signed this \_\_\_\_\_ day of December, 1970, but is effective as of October 1, 1970 and thereby reduces to writing, an oral agreement containing these terms made October 1, 1970."

CONCLUSIONS OF LAW

A. That days worked by petitioner, Wilson White, III, in 1970 in Chicago and Malibu, where Wilson White, Inc. maintained branch offices, were necessary to the performance of his duties as president of the corporation.

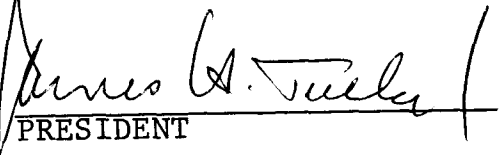
B. That days worked by petitioner, Wilson White, III, in 1970 and 1971 in Newark incident to the planned merger of Wilson White, Inc. and Tecott, Jackson & Co. were necessary to the performance of his duties as president of Wilson White, Inc.

C. That the petitioners have failed to establish that Wilson White, III's absence from New York State on June 29, 1970 and June 30, 1970, was necessary to the performance of his duties as president of Wilson White, Inc.

D. That the petition of Wilson White, III and Joyce R. White is granted to the extent set forth in paragraphs "A" and "B". The Income Tax Bureau is directed to modify the Statement of Audit Changes and Notice of Deficiency issued March 25, 1974 to reflect the above Conclusions of Law.

DATED: Albany, New York  
June 24, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER