

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK D. JACOBY AND DORIS F. JACOBY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(8)~~ 22 of the
Tax Law for the Year(s) ~~1969 and 1971~~
1969 and 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 17 day of February, 1978, she served the within

Notice of Decision by (certified) mail upon Frank D. & Doris F. Jacoby

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

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

as follows: Frank D. & Doris F. Jacoby
8 West Branch Road
Westport, Connecticut 06880

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)~~ petitioner.

Sworn to before me this

17th day of February, 1978.

Janet Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK D. JACOBY AND DORIS F. JACOBY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(30)~~ 22 of the
Tax Law for the Year(s) ~~XXXXXX~~
1969 and 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 17th day of February, 1978, she served the within

Notice of Decision by (certified) mail upon William T. McDermott, CPA

(representative of) the petitioner in the within proceeding,

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

as follows: William T. McDermott, CPA
415 Madison Avenue
New York, New York 10017

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

17th day of February, 1978







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

February 17, 1978

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

Frank D. & Doris F. Jacoby
8 West Branch Road
Westport, Connecticut 06880

Dear Mr. & Mrs. Jacoby:

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 **(b) 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 CHIRIVATI
HEARING EXAMINER

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
FRANK D. JACOBY AND DORIS F. JACOBY :
for Redetermination of a Deficiency or for : DECISION
Refund of Personal Income Tax under Article :
22 of the Tax Law for the years 1969 and 1971. :
:

Petitioners, Frank D. Jacoby and Doris F. Jacoby, residing at 8 West Branch Road, Westport, Connecticut 06880, have 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 1971 (File No. 13699).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 27, 1977 at 10:45 A.M. Petitioner Frank D. Jacoby appeared by petitioner Doris F. Jacoby, his wife, who appeared pro se and by William T. McDermott, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Lawrence Stevens, Esq., of counsel).

ISSUE

Whether days worked at home in Connecticut by petitioner Doris F. Jacoby during the year 1969 were allocable as days worked outside New York State.

FINDINGS OF FACTS

1. Petitioners, Frank D. Jacoby and Doris F. Jacoby, filed amended, combined but separate New York State nonresident income tax returns for the year 1969, and a joint New York State nonresident income tax return for the year 1971. Income received by petitioner Doris F. Jacoby from Guidance Associates of Pleasantville, Inc. ("hereinafter Guidance Associates") during the year 1969 was allocated to New York State on her amended return, based on the number of days worked within and without the State of New York. Sixty-eight days were claimed as having been worked outside New York State, thirty-nine of which were worked at home. No income from Guidance Associates was allocated to New York State on the 1971 New York return. Doris F. Jacoby contended that she rendered no services to said firm in that year. She testified that she was hospitalized on January 4, 1971 and did not return to work, and that Guidance Associates kept her on the payroll until mid-April of 1971. She was paid her severance pay in said year.

2. On October 15, 1974, the Income Tax Bureau issued a Statement of Refund Adjustment to the petitioners based on a recomputation of the income allocated to New York by petitioner Doris F. Jacoby. The Income Tax Bureau contended that days worked at home in 1969 could not be recognized as days worked outside of New York State for purposes of allocation of income received from Guidance Associates. The Income Tax Bureau further held that income received from the aforesaid firm in 1971 was allocable to New York State to the same extent as compensation received in prior years, since no services were performed in 1971. The Bureau also made other adjustments for the 1969 tax year which were not contested by the petitioners.

3. Petitioners, Frank D. Jacoby and Doris F. Jacoby, did not contest the adjustment that held the income received by petitioner Doris F. Jacoby during the year 1971 to be taxable to New York State to the same extent as compensation received in prior years.

However, they did contest the disallowance of the thirty-nine days claimed as days worked outside New York State for the year 1969. This disallowance affected allocation of income to New York State for 1969 and 1971.

4. Petitioners, Frank D. Jacoby and Doris F. Jacoby, were residents of the State of Connecticut during the years 1969 and 1971. Doris F. Jacoby was employed in 1969 and 1971 by Guidance Associates, a wholly-owned subsidiary of Harcourt Brace Jovanovich, located at 757 Third Avenue, New York, New York.

5. Guidance Associates was an audio-visual publishing company producing instructional materials for schools. During the year 1969, petitioner Doris F. Jacoby was responsible for the sound production of all audio-visual programs published by said firm. Her duties involved the creative writing and editing of scripts, the previewing of music and other recordings and the pre-mixing of these materials with voice to determine the best possible sound.

6. During the years 1969 and 1971, petitioner Doris F. Jacoby was supplied with office space and a sound studio at her employer's New York City offices. She also maintained an office at her home in Westport, Connecticut, which her employer supplied with tape recorders and editing equipment.

7. Petitioner Doris F. Jacoby testified that the office and sound studio facilities provided by Guidance Associates in New York City were not adequate for her to perform all of her duties because the sound studio was occupied full-time with final recordings and mixes and was not available for the pre-mixing duties performed by her. She further testified that her office was located in an area which was not conducive to performing work involving the creative writing and editing of scripts.

8. Petitioner Doris F. Jacoby claimed that by contract and because of the nature of her work and the lack of adequate office facilities, she was required to perform some of her duties at her home in Connecticut.

9. The employment contract of the petitioner Doris F. Jacoby provided in part that "You shall serve as a vice-president, in charge of production. Such work may be performed either at Guidance's offices, or your offices or both."

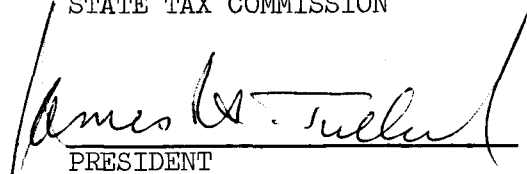
CONCLUSIONS OF LAW

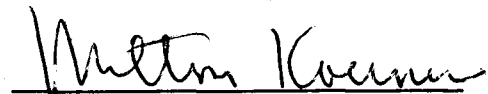
A. That the thirty-nine days worked at home in Connecticut during the year 1969 by petitioner Doris F. Jacoby were worked there by reason of her necessity and convenience and not for the necessity of her employer and, therefore, said days must be held to be days worked within New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

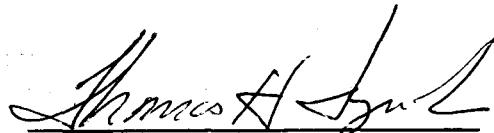
B. That the petition of Frank D. Jacoby and Doris F. Jacoby is denied.

DATED: Albany, New York
February 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER