

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RALPH and BONNIE KEITH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (2) 22 of the :
Tax Law for the Year (1972) or Period(s) :
1972

State of New York
County of

John Huhn , 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 24th day of April , 1978 , he served the within
Notice of Decision by (certified) mail upon Ralph & Bonnie Keith

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

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

as follows: Ralph and Bonnie Keith
181 Cognewaugh Road
Cos Cob, Connecticut 06807

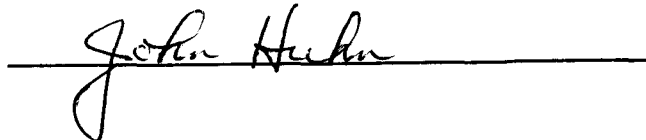
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

24th day of April , 1978 .







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

April 24, 1978

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

Ralph and Bonnie Keith
181 Cognewaugh Road
Coe Cob, Connecticut 06807

Dear Mr. & Mrs. Keith:

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(s) **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 Chryzasty
Joseph Chryzasty
Hearing Examiner

~~cc: Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RALPH and BONNIE KEITH	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioners, Ralph and Bonnie Keith, residing at 181 Cognewaugh Road, Cos Cob, Connecticut 06807, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 13252).

A small claims hearing was held before Philip Mercurcio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 18, 1977 at 1:15 P.M. Petitioner Ralph Keith appeared pro se and for his wife, petitioner Bonnie Keith. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner Ralph Keith, a nonresident, properly allocated his salary income for 1972 New York State income tax purposes.

FINDINGS OF FACT

1. Petitioners, Ralph and Bonnie Keith, were residents of the State of Connecticut during 1972.

2. During the year 1972, petitioner Ralph Keith was employed by Commonwealth Oil Refining Company, Inc. as marine manager in charge of the firm's world-wide transportation operations, including its shipping activities. He worked out of his employer's New York City office, but was required to work both within and without New York State.

3. Petitioners timely filed a New York State income tax nonresident return for 1972, on which they allocated the salary of petitioner Ralph Keith on the basis of the ratio that 74 days claimed as worked within New York State bore to 293 total working days.

4. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, based upon details contained in a Statement of Audit Changes dated September 16, 1974. Said Statement held that the salary income of petitioner Ralph Keith was allocable to New York State for income tax purposes on the basis of the ratio that 178 days worked within New York State bore to 216 total working days.

5. On September 17, 1974, petitioner Ralph Keith submitted a letter to the Income Tax Bureau in which he alleged that 57 percent of his salary was allocable to New York State sources since he worked 57 percent of his employment time within New York State. Therefore, he enclosed a check for \$309.56 in payment of the additional personal income tax which he computed to be due as a result of his revised allocation for 1972.

6. Petitioner Ralph Keith testified that he worked 216 days for his employer during 1972, of which 178 days were worked within New York State and 38 days were worked outside New York State. However, he contended that because of his duties as marine manager of Commonwealth Oil Refining Company, Inc., he did not work the normal seven and one-half hours a day, five days a week, as worked by most other employees of the firm. He further contended that while working in New York State

he worked an average of ten hours a day and while working outside New York State he worked an average of eighteen hours a day. He did not submit any documentary evidence to show the number of hours he worked within or without New York State.

7. Petitioner Ralph Keith stated that in order to fairly and equitably allocate his income to New York State, the allocation of his salary income should be based upon the time he worked within and without New York State and not upon the days he worked within and without New York State.

CONCLUSIONS OF LAW

A. That petitioner Ralph Keith has failed to sustain the burden of proof required to show the hours he worked within and without New York State in 1972. Therefore, his salary was properly allocable to New York State sources on the basis of the ratio that the number of days worked within New York State bore to the total working days, in accordance with the meaning and intent of 20 NYCRR 131.16.

B. That the Income Tax Bureau is instructed to reduce the amount of the Notice of Deficiency issued March 31, 1975 by petitioners' payment of \$309.56 and that except as so modified, said Notice is sustained, together with such additional interest as may be lawfully owing.

C. That except as modified above, the petition of Ralph and Bonnie Keith is otherwise denied.

DATED: Albany, New York
April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER