

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
DONALD FORTINI

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) ~~or Period(s)~~ :
1972


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 9 day of June, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Donald Fortini
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Donald Fortini
309 Rocky Rapids Road
Stamford, Connecticut 06903

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
9 day of June, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
DONALD FORTINI : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1972. :

Petitioner, Donald Fortini, residing at 309 Rocky Rapids Road, Stamford, Connecticut 06903, 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. 12079).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 24, 1977 at 1:15 P.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether petitioner properly allocated his income to sources within and without New York State for the year 1972.

FINDINGS OF FACT

1. Petitioner, Donald Fortini, a Connecticut resident, filed a New York State income tax nonresident return for the year 1972. For income allocation purposes, he claimed that he worked 242 days during the year, of which 135 were days worked outside New York State.

2. On August 25, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Donald Fortini, and his wife, Nancy E. Fortini, in the sum of \$2,193.48, upon the grounds that they failed to substantiate the 135 days Donald Fortini claimed that he worked outside New York State. Accordingly, the Income Tax Bureau issued a Notice of Deficiency therefore.

3. During the year 1972, petitioner, Donald Fortini, was employed by Network Cinema Corp. His employment required considerable travel by him throughout the United States.

4. The Internal Revenue Service audited petitioner, Donald Fortini's Federal income tax return for the year 1972 and concluded that petitioner had properly filed said return. Included on said return was a deduction for travel expenses in the sum of \$8,025.00.

5. Petitioner, Donald Fortini, contended that his diary and other documents for the year 1972 had been submitted to the Internal Revenue Service in conjunction with the audit that they were conducting on his Federal income tax return for that year. He stated that the Internal Revenue Service failed to locate or return his documents. Therefore, he concluded it to be virtually impossible to substantiate the days worked outside New York State.

6. Petitioner, Donald Fortini, introduced weekly salesmen commission and advance reports into evidence, which indicated that the commissions he received during the year at issue were from sales to customers located outside New York State.

7. During the year 1972, Network Cinema Corp. paid petitioner, Donald Fortini's transportation costs. The petitioner attempted to obtain the records for the purpose of substantiating his travel schedule. However, Network Cinema Corp.'s records for the year 1972 were in storage and not readily available.

8. The days petitioner, Donald Fortini, claimed as days worked without New York State for the year 1972 did not include days worked by petitioner at his Connecticut home.

9. Petitioner, Donald Fortini's oral testimony was consistent with the evidence he was able to produce.

CONCLUSIONS OF LAW

A. That although petitioner, Donald Fortini, was unable to present the documentary evidence usually required to substantiate the allocation of days worked within and without New York State, on the basis of his oral testimony combined with the documentary evidence that he was able to submit, it is deemed that he properly allocated his income for the year 1972.

B. That the petition of Donald Fortini is granted and the Notice of Deficiency issued on August 25, 1975 is cancelled.

DATED: Albany, New York

June 9, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER