

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BETTY BRAXTON PRESTON

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)~~ 1971. :

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~He~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of April , 1978, ~~He~~ he served the within
Notice of Decision by (certified) mail upon Betty Braxton Preston

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Ms. Betty Braxton Preston
22 Carnegie Drive
Princeton, New Jersey 08540

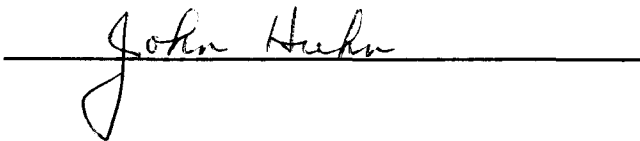
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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 April , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BETTY BRAXTON PRESTON

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 ~~(sixty Period)~~ 1971. :

AFFIDAVIT OF MAILING

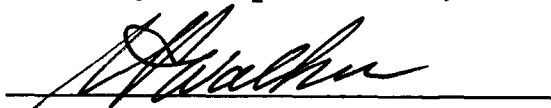
State of New York
County of Albany

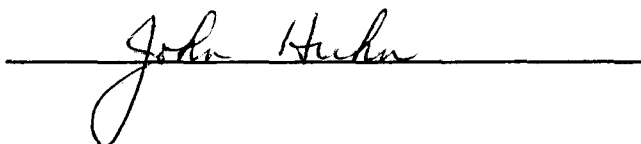
John Huhn , being duly sworn, deposes and says that
~~he~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of April , 1978 , ~~he~~ he served the within
Notice of Decision by (certified) mail upon Steven Delibert
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Steven Delibert, Esq.
Karpatkin, Pollet & LeMoult
1345 Avenue of the Americas
New York, New York 10019
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.

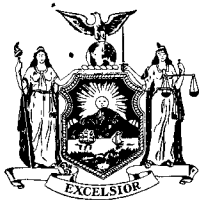
That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

17th day of April , 1978.







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

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

April 17, 1978

**Ms. Betty Braxton Preston
22 Carnegie Drive
Princeton, New Jersey 08540**

Dear Ms. Preston:

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 Chyrywat
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
BETTY BRAXTON PRESTON
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1971.

DECISION

Petitioner, Betty Braxton Preston, 22 Carnegie Drive, Princeton,
New Jersey 08540, 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 1971 (File No. 13815).

On July 21, 1977, petitioner advised the State Tax Commission, in
writing, that she desired to waive a small claims hearing and to submit
the case to the State Tax Commission upon the entire record contained in the
file.

ISSUE

Whether days worked by petitioner at her home in New Jersey constituted
days worked outside New York State for purposes of allocating income earned
within and without New York State.

FINDINGS OF FACT

1. Petitioner, Betty Braxton Preston, filed a New York State income tax
nonresident return for the year 1971, on which she allocated her salary income
to New York State on the basis of the ratio that the number of days worked within
New York State bore to the total number of days worked. On Schedule "A-1" of her

return (Allocation of Wages and Salary Income to New York State), petitioner reported a total of 224 days worked. Of these days, 32 were reported as being worked in New York State and 192 outside the State.

2. The petitioner submitted information to the Income Tax Bureau showing that of the 192 days worked outside of New York State, 187 days were worked at her home in New Jersey.

3. On January 19, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, asserting personal income tax on the grounds that time spent working at home was not a proper basis for allocation of salary income outside New York State. In accordance with the aforesaid Statement, a Notice of Deficiency was issued on February 25, 1974 for \$386.50, plus interest.

4. Betty Braxton Preston was a New Jersey resident during the year at issue, and was also an employee of the Educational Products Information Exchange Institute ("EPIE"), a New York State-based corporation. Working in an office at her home in New Jersey, petitioner edited major periodical publications and certain special publications, participated in telephone and mail research surveys and wrote specialized publications under contracts between EPIE and other educational associations.

5. Petitioner contended that she was required to work in New Jersey because it was necessary for her to have access to the specialized library and other facilities of the Educational Testing Service of Princeton, New Jersey. Petitioner also alleged that a separate office was needed for her to properly perform her job and that EPIE's office in New York City was unable to adequately accommodate her.

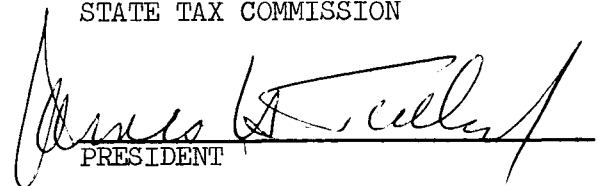
CONCLUSIONS OF LAW


A. That the days worked at home in New Jersey in 1971 by petitioner, Betty Braxton Preston, were worked there by reason of her necessity and convenience and not for the necessity of her employer; therefore, the days worked at home by petitioner are not recognized as days worked outside New York State for purposes of allocating income within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.


B. That the petition of Betty Braxton Preston is denied and the Notice of Deficiency issued on February 25, 1974 is sustained.

DATED: Albany, New York
April 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER