

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SHIH C. AND MAMIE K. WANG

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) ~~xxxx~~ ~~xxxx~~ ~~(x)~~
1972 and 1973.

State of New York
County of Albany

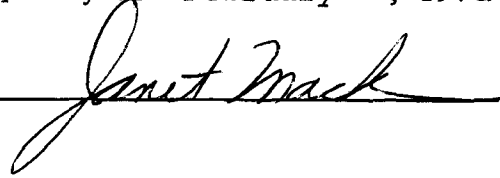
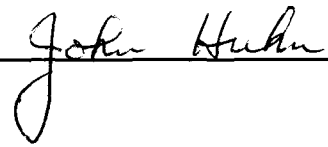
John Huhn, being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of February, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Shih C. & Mamie K. Wang

(~~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. Shih C. Wang
18 Kent Road
Tenafly, New Jersey 07670

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~~
~~xxxx~~) 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
6th day of February, 1978

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
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~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of February, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Stephen R. Abrams, CPA

(representative of) the petitioner in the within proceeding,

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

as follows: Stephen R. Abrams, CPA
304 West 58th Street
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

6th day of February, 1978

Janet Mack

John Huhn



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

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

February 6, 1978

**Mr. & Mrs. Shih C. Wang
18 Kent Road
Tenafly, New Jersey 07670**


Dear Mr. & Mrs. Wang:

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 **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 Petitions :
of :
SHIH C. AND MAMIE K. WANG : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1972 and 1973. :

Petitioners, Shih C. Wang and Mamie K. Wang, residing at 18 Kent Road, Tenafly, New Jersey 07670, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File No. 13459).

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 October 18, 1976 at 1:15 P.M. The petitioners appeared by Stephen R. Abrams, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the allocations of days worked within and without New York State claimed by petitioners, Shih C. Wang and Mamie K. Wang, during the years 1972 and 1973 were correct.

II. Whether travel expenses incurred by Mamie K. Wang and claimed as miscellaneous itemized deductions on the petitioners' 1972 New York State combined nonresident income tax return are allowable deductions.

FINDINGS OF FACT

1. Petitioners, Shih C. Wang and Mamie K. Wang, filed New York State combined nonresident income tax returns for the years 1972 and 1973. They allocated their respective salary income to New York State based on the number of days each worked within and without the State of New York. Petitioner Shih C. Wang claimed one hundred and forty days and seventy-three days as days worked outside New York State in 1972 and 1973, respectively. Petitioner Mamie K. Wang claimed thirty-two days and fourteen days as days worked outside New York State in 1972 and 1973, respectively. Mamie K. Wang included days spent accompanying her husband and visiting nursing schools in Switzerland in the days worked outside New York in 1972 and 1973. She also deducted travel expenses of \$796.00 for the tax year 1972, in connection with a trip to Switzerland.

2. On July 28, 1975, the Income Tax Bureau issued notices of deficiency against the petitioners, Shih C. Wang and Mamie K. Wang. Said notices were based on statements of audit changes which held that days spent by petitioner Shih C. Wang on sabbatical leave and on his business activities could not be considered as working days for purposes of allocating his salary from Columbia University for tax years 1972 and 1973. Said statement also held that days spent by petitioner Mamie K. Wang accompanying her husband were not considered working days for purposes of allocating her salary for tax years 1972 and 1973.

The statements of audit changes corrected errors in reporting duplicate days on petitioner Shih C. Wang's allocation schedule, disallowed travel expenses incurred by Mamie K. Wang in connection with her trip to Switzerland and made modification adjustments and corrections pursuant to Section 612(c)(7), 615(c)(1) and 615(d)(1) of the Tax Law.

3. Petitioners, Shih C. Wang and Mamie K. Wang, did not contest the modification adjustments which were made. Shih C. Wang did not contest the adjustment made to correct the duplication of days reported in his allocation schedule nor did he contest elimination of days spent on his business activities from said schedule.

4. Petitioner Shih C. Wang is employed by the College of Physicians and Surgeons of Columbia University located in New York City, as a professor in the Department of Pharmacology. During the latter half of 1972 and for the first two months of 1973, he was granted a sabaatical leave. While on sabbatical leave he continued to receive his full salary from the university.

5. The purpose of granting sabbatical leave as set forth in the Faculty Handbook of Columbia University, 1975 Edition, states:

"...in recognition of the primary purpose of sabbatical leave, namely, to provide the officer with uninterrupted opportunity of research and intellectual refreshment, no officer may accept a teaching appointment, etc." It also states that: "Each professor and associate professor who holds a tenure appointment is eligible for a sabbatical

leave of one year at half pay or a half year at full salary after completing twelve terms of fulltime teaching, including time in all professional grades."

6. During the years 1972 and 1973, petitioner Mamie K. Wang was employed by New York Hospital as an assistant professor of Nursing.

7. Petitioner Mamie K. Wang contended that her trip to Switzerland was primarily for the purpose of visiting other institutions that are similar to New York Hospital. In addition, she served as an aide to her husband, Shih C. Wang. Mamie K. Wang did not submit any documentary evidence relating to her activities while in Switzerland.

CONCLUSIONS OF LAW

A. That the sabbatical leave received by the petitioner Shih C. Wang during the years 1972 and 1973, was an employee benefit based upon past services performed by said petitioner within and without the State of New York in the service of his employer. Such days spent while on sabbatical leave are considered leave days with pay. Therefore, such days are non-working days for purposes of allocating income based on days worked within and without New York State within the meaning and intent of Section 632(c) of the Tax Law.

B. That the days claimed as worked outside New York State by petitioner Mamie K. Wang, while visiting hospitals in Switzerland and while aiding her husband Shih C. Wang, were spent there for her

own convenience rather than for the necessity of her employer and, therefore, these days are considered non-working days for income allocation purposes, within the meaning and intent of Section 632(c) of the Tax Law.

C. That petitioner Mamie K. Wang has failed to sustain the burden of proof in establishing the deductibility of her travel expenses in connection with her trip to Switzerland in accordance with section 689(e) of the Tax Law.

D. That the petition of Shih C. Wang is denied and the Notice of Deficiency issued on July 28, 1975 in the sum of \$948.31 is sustained, together with such additional interest as may be lawfully owing.

E. That the petition of Mamie C. Wang is denied and the Notice of Deficiency issued on July 28, 1975 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
February 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER