

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LEROY COLBERT and JACQUELINE COLBERT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article ~~(22)~~ 22 of the  
Tax Law for the Year(s) ~~XXXXXX~~ 1970,  
1971 and 1972.

State of New York  
County of Albany

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 20th day of March, 1979, he served the within  
Notice of Decision by (certified) mail upon Leroy & Jacqueline Colbert

~~XXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Leroy & Jacqueline Colbert  
394 North Woodland St.  
Englewood, New Jersey 07631

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 ~~XXXXXXXXXXXXXXXXXX~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~XXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

20th day of March, 1979.

Marcy Dominini

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
LEROY COLBERT and JACQUELINE COLBERT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(XX)~~ 22 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1970, 1971 and 1972.

State of New York  
County of Albany

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 20th day of March , 19 79, he served the within  
Notice of Decision by (certified) mail upon Norton A. Rosenberg

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Norton A. Rosenberg  
8243 Jericho Turnpike  
Woodbury, New York

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

20th day of March , 19 79.

Marcy Dominici

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

March 20, 1979

**Leroy & Jacqueline Colbert**  
**394 North Woodland St.**  
**Englewood, New Jersey 07631**

**Dear Mr. & Mrs. Colbert:**

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 ~~(8)~~ **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 :  
LEROY COLBERT and JACQUELINE COLBERT : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Years :  
1970, 1971 and 1972. :

---

Petitioners, Leroy Colbert and Jacqueline Colbert, 394 North Woodland Street, Englewood, New Jersey 07631, 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 1970, 1971 and 1972 (File No. 10632).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 26, 1976 at 10:45 A.M. Petitioners appeared by Norton A. Rosenberg. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

#### ISSUES

I. Whether days worked by petitioner Leroy Colbert at his home in Englewood, New Jersey, can be considered days worked outside New York State for purposes of income allocation.

II. Whether the expenses of operating a van in 1972 in the performance of his duties as an employeè are deductible.

FINDINGS OF FACT

1. Petitioners, Leroy Colbert and Jacqueline Colbert, are the sole stockholders and officers of Colbert Enterprises, Inc. (hereinafter "CEI"), a retail sporting goods store located in New York City.

2. Petitioners filed nonresident New York State combined income tax returns for 1970 and 1972, and a nonresident New York State joint return for 1971. In each of the years at issue, Leroy Colbert allocated wage income which he received from CEI to sources within and without New York State. In 1972 Leroy Colbert also reported other income of \$1,335.00 to New York State. This income was the excess of a reimbursement of \$5,110.00 which he received from CEI for expenses incurred for maintaining office and storage facilities at his home in New Jersey, as well as out-of-pocket expenses for operating a vehicle for CEI.

3. On January 27, 1975, the Income Tax Bureau issued three notices of deficiency. Two notices (for 1970 and 1972) were issued against Leroy Colbert and another notice was issued for 1971 against Leroy Colbert and Jacqueline Colbert. The notices for all years were issued on the grounds that all of the wages Leroy Colbert received from CEI were allocable to New York. The deficiency for 1972 also included an adjustment increasing other income reported by Leroy Colbert from \$1,335.00 (reimbursement in excess of expense) to \$4,335.00. This adjustment was the result of the disallowance of expenses of \$3,000.00. Other adjustments were made in the notices of deficiency for 1971 and 1972 which are not at issue here.

4. Due to the lack of office and storage facilities at the New York store, petitioners used their home as an office and warehouse for the corporation. Petitioner Leroy Colbert purchased, ordered and stored merchandise in his home. In addition, he maintained inventory records and met with sales representatives.

5. The corporation used petitioners' home as an office and warehouse, since it could not afford to rent such facilities. Attempts to secure adequate facilities resulted in the realization that the payment of such high rental fees, along with the cost of additional employees, would create a financial hardship that could not be borne by the corporation.

6. While petitioner Leroy Colbert performed his duties, his wife, Jacqueline Colbert, supervised the employees and conducted the general retail operations of the store in New York.

7. During 1972 CEI purchased a van for Leroy Colbert's use in making deliveries. Leroy Colbert incurred out-of-pocket expenses of \$1,800.00 for the operation of the van for CEI.

#### CONCLUSIONS OF LAW

A. That the days worked by petitioner Leroy Colbert in his home in New Jersey during the years at issue were worked there by reason of his necessity and convenience and not for the convenience of his employer, Colbert Enterprises, Inc. Accordingly, such days are not considered days worked outside New York State for purposes of allocating income to sources outside New York State, within the meaning and intent of 20 NYCRR 131.16.

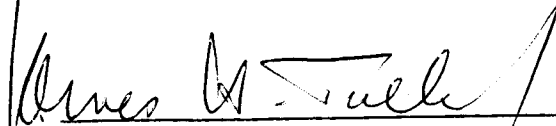
B. That the expense of \$1,800.00 incurred by petitioner Leroy Colbert in the operation of a delivery van for CEI during 1972 is deductible, in accordance with section 62(2)(A) of the Internal Revenue Code; that the Income Tax Bureau is directed to modify the Notice of Deficiency issued for 1972 by reducing the other income reported (reimbursement in excess of expense) by this amount, to \$2,535.00.

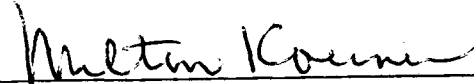
C. That except as provided in Conclusion of Law "B", the petition of Leroy Colbert and Jacqueline Colbert is denied and the notices of deficiency issued January 27, 1975 are sustained.

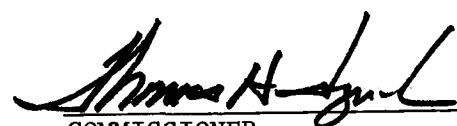
DATED: Albany, New York

March 20, 1979

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER