

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Harvey H. & Eugenia T. Cross :

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Year 1967. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jay Vredenburg, 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 14th day of December, 1979, he served the within notice of Decision by certified mail upon Harvey H. & Eugenia T. Cross, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harvey H. & Eugenia T. Cross  
c/o Harvey Cross Associates, Inc.  
Darien, CT 06820

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

Sworn to before me this  
14th day of December, 1979.

Joanne Kneapp

J. Vredenburg

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

December 14, 1979

Harvey H. & Eugenia T. Cross  
c/o Harvey Cross Associates, Inc.  
P.O. Box 3451  
Darien, CT 06820

Dear Mr. & Mrs. Cross:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
HARVEY H. CROSS and EUGENIA T. CROSS : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1967. :

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Petitioners, Harvey H. and Eugenia T. Cross, c/o Harvey Cross Associates, Inc., P.O. Box 3451, Darien, Connecticut 06820, 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 1967 (File No. 13799).

A small claims hearing was held before Joseph Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 16, 1977 at 2:45 P.M. Petitioner Eugenia T. Cross appeared pro se and for petitioner Harvey H. Cross. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether petitioner Harvey H. Cross properly allocated his salary income to New York State for 1967.

FINDINGS OF FACT

1. Petitioners, Harvey H. and Eugenia T. Cross, residents of Connecticut, filed a joint New York State income tax nonresident return for 1967. They allocated the salary income received by Harvey H. Cross on the basis of the ratio that the number of days he reported as being worked within New York State bore to the total number of days that he worked in said year.

2. On November 18, 1969, petitioner Harvey H. Cross submitted a Questionnaire (IT-2332) to the Income Tax Bureau, in which he reported 108 of his

total 308 working days as being days worked outside New York State in 1967. He listed 64 days as having been spent in foreign countries. He also included the number of working days spent in each country and the nature of the duties performed there. Of the 64 days allegedly spent abroad, he listed 32 days where a portion of the days worked outside New York State included days spent in the employer's Connecticut office. The form failed to indicate exactly how many of the 32 days were spent overseas and how many of the days were worked in the Connecticut office located in petitioner's home. The questionnaire listed the location, the duties, the number of working days, and the dates in the following manner:

<u>Dates</u>	<u>Number of Working Days</u>	<u>Location</u>	<u>Nature of Duties</u>
Jan. 17-23	7	San Juan - Santo Domingo	Sales & Administration
April 12-25	14	Panama through Guatemala	" " "
June 18-July 3	14	Venezuela, Peru-Conn. Office	" " "
Sept. 11-28	18	Germany, Spain-Conn. Office	" " "
Nov. 17-27	11	San Juan, Puerto Rico	" " "
Saturdays	44	Worked in Conn. Office	Administration

3. The Income Tax Bureau contended that the number of days petitioner Harvey H. Cross worked in Connecticut were worked there out of convenience to himself, and not out of necessity to the employer. Also, since petitioners failed to clearly delineate how many days were actually spent in foreign countries on business, the Income Tax Bureau disallowed the days petitioner Harvey H. Cross claimed as being worked outside New York State. On March 20, 1972, the Income Tax Bureau issued a Notice of Deficiency against Harvey H. and Eugenia T. Cross for \$307.36. This was done on the grounds that petitioners had failed to substantiate their allocation of wages earned outside New York State.

4. Harvey H. Cross was employed by Harvey Cross Associates, Inc., a corporation based in New York State which imported South American products. One aspect of Mr. Cross' job required him to make business trips to South American countries.

5. Harvey Cross Associates, Inc.'s Connecticut office, which was provided for in the corporation's by-laws, was located in the home of petitioners, Harvey H. and Eugenia T. Cross. Petitioner Harvey H. Cross contended that the work performed there was necessary for his employer as it consisted of writing reports, orders and other administrative duties which would be better performed at the Connecticut office.

6. Petitioner Harvey H. Cross submitted a Schedule A-1 (Allocation of Wages to New York), which was compiled and prepared in 1976. On this document, he listed Saturdays originally reported as days worked in Connecticut office as nonworking days, as well as other additional nonworking days. As a result, the total number of days worked was reduced to 239, and the number of days worked outside New York was reduced to 64.

7. Petitioner Harvey H. Cross' passport indicated that he spent a total of 60 days in various foreign countries during 1967.

#### CONCLUSIONS OF LAW

A. That petitioners, Harvey H. Cross and Eugenia T. Cross, have failed to sustain the burden of proof which requires them to show that the 44 Saturdays on which petitioner Harvey H. Cross worked in the Connecticut office of his employer which was located in his home, were days worked there by reason of the necessity of his employer, rather than for his own convenience; therefore, said days constituted days worked within New York State for income allocation purposes, within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.16.

B. That petitioner Harvey H. Cross spent 60 days outside New York State, 56 of which were determined to be work days; therefore, the salary he earned during those periods was not subject to New York State income tax, in accordance with section 632 of the Tax Law and 20 NYCRR 131.16.

C. That the Income Tax Bureau is directed to modify the Notice of Deficiency issued on March 20, 1972, so as to allocate the salary income of petitioner Harvey H. Cross for 1967 on the basis of the ratio that 252 days worked in New York State bears to 308 total days worked, and to also recompute the amount of the New York itemized deduction allowable for said year; and that, except as so granted, the petition of Harvey H. Cross and Eugenia T. Cross is in all other respects denied.

DATED: Albany, New York

DEC 14 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER