

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Henry George & Eleanor Fischer :

AFFIDAVIT OF MAILING

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 Years 1970 & 1971. :

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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Henry George & Eleanor Fischer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry George & Eleanor Fischer

RR #1, Box 333

Sherman, CT 06784

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
17th day of August, 1979.

Victoria Gary

Jay G. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Bertram S. Primoff the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Bertram S. Primoff
Primoff & Primoff, Esqs.
41 E. 42nd St.
New York, NY 10017

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 August, 1979.

Victoria Gary

Jay G. Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 17, 1979

Henry George & Eleanor Fischer
RR #1, Box 333
Sherman, CT 06784

Dear Mr. & Mrs. Fischer:

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 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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative
Bertram S. Primoff
Primoff & Primoff, Esqs.
41 E. 42nd St.
New York, NY 10017
Taxing Bureau's Representative

STATE TAX COMMISSION

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 October 20, 1977 at 1:15 P.M. Petitioners appeared by Bertram S. Primoff, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

Whether days worked at petitioners' home in Connecticut can be considered as days worked without New York State for purposes of income allocation.

FINDINGS OF FACT

1. Petitioners, Henry Fischer and Eleanor Fischer, filed a joint New York State income tax resident return for the five-month period of January 1, 1970 to May 28, 1970. Joint New York State nonresident returns were filed for the seven-month period of May 29, 1970 to December 31, 1970, as well as for the calendar year 1971, whereby salary income received by petitioner Henry Fischer was allocated, based on days worked within and without New York State.

2. On audit, the Income Tax Bureau issued two notices of deficiency, whereby all days worked at petitioners' home in Connecticut during the nonresident periods were considered days worked in New York State.

3. Petitioner Henry Fischer is an archaeologist who is renowned in the field of Egyptology. Prior to July 1, 1970, he was employed as such by the Metropolitan Museum of Art in New York City.

4. On July 1, 1970, petitioner Henry Fischer was awarded an endowed chair in Egyptology by a tax-exempt foundation associated with the Metropolitan Museum of Art. The award relieved him of his normal duties of employment and allowed him to devote all of his professional time to research in Egyptology.

5. The endowed chair in Egyptology was accepted by petitioner Henry Fischer, with the conditions that he a) be given a "free hand"

in the type of research and writing he conducted and b) that his research be conducted at whatever location he felt it could best be accomplished.

6. The award was paid to the Metropolitan Museum of Art who, in turn, paid the proceeds to petitioner Henry Fischer in the form of a salary. However, he was not required to report to the Museum or to render any services for them, nor did the Museum have any control over his research activities.

7. The bulk of petitioner Henry Fischer's research, which involved ancient Egyptian history, philology, iconography and palaeography, was conducted at his home in Connecticut. Mr. Fischer maintained two large rooms at his home exclusively for research. They contained 1,200 volumes of books, 2,500 offprints, 2,000 slides, a voluminous amount of notes, files and photographs, and an assortment of office furniture, fixtures and equipment.

8. In order to supplement his research sources, petitioner often used the facilities at the Metropolitan Museum of Art. He spent 29 days doing so from July 1, 1970 through December 31, 1970, and 62 days during 1971. The Museum permitted him to use its office and secretarial facilities.

9. Petitioner Henry Fischer has published the findings of his research activities in numerous scientific publications, both American

and foreign; moreover, he has written several books in the field of Egyptian studies. All articles, books, research papers, and theories generated from his research activities are his sole property, as is all income derived therefrom. Such income was reported as gross business income from his self-employed professional activities as an Egyptologist. This resulted in a net loss for 1970 and 1971 which was not claimed by him for New York State tax purposes.

10. In addition to his research activities, petitioner Henry Fischer was employed to teach Egyptology at New York University one evening a week during 1970 and 1971. In connection therewith, Mr. Fischer used his home to prepare lessons. He accordingly allocated his New York University salary to sources within and without New York State, based on days worked within New York and at his home in Connecticut. At the hearing, petitioner conceded that this salary was New York source income and that it was not allocable to sources within and without the State.

CONCLUSIONS OF LAW

A. That although petitioner Henry Fischer received the research award in the form of a salary, he was not an employee within the meaning of section 3401 of the Internal Revenue Code, and Treas. Reg. Sec 31.3401(c)-1, applicable by virtue of section 607(a) of the

Tax Law. Accordingly, the convenience test of 20 NYCRR 131.16 can not be applied to the remuneration received from the endowed chair in Egyptology.

B. That the research activities of petitioner Henry Fischer constitute the carrying on of a profession partly within and partly without New York State, in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.12; accordingly, the income derived from the research activities should be included in his gross business income from his activities as an Egyptologist.

C. That due to the nature and character of said petitioner's activities and remuneration, net business income must be allocated based on days worked within and without New York State, in order to create a fair and equitable method of apportionment and allocation, in accordance with the meaning and intent of section 632(c) and 20 NYCRR 131.13(c).

D. That the petition of Henry Fischer and Eleanor Fischer is granted to the extent that New York adjusted gross income be recomputed for the nonresident period as follows:

	<u>1970</u>	<u>1971</u>
Business Income (or Loss)	\$ (159.00)	\$ (536.00)
Research Award (After 3/1/70)	9,774.00	21,850.00
Total Business Income	<u>\$9,615.00</u>	<u>\$21,314.00</u>
Total Working Days	154	304
Days Worked In New York State	29	62
Business Allocation Ratio	<u>.1883</u>	<u>.2039</u>

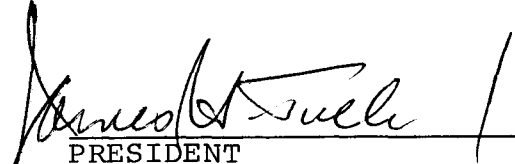
	<u>1970</u>	<u>1971</u>
Total New York Business Income	\$1,811.00	\$ 4,346.00
Museum Salary (To 6/30/70)	1,629.00	- 0 -
Salary from Teaching	4,083.00	7,000.00
New York Adjusted Gross Income	<u>\$7,523.00</u>	<u>\$11,346.00</u>

The Income Tax Bureau is hereby directed to accordingly modify the two notices of deficiency issued April 12, 1974 and August 26, 1974; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 17 1979


PRESIDENT


COMMISSIONER


COMMISSIONER