

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Joseph N. & June R. Gassaway :  
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 1972. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

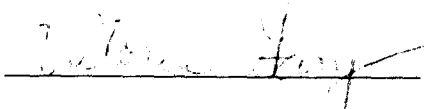
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of August, 1979, he served the within Notice of Decision by certified mail upon Joseph N. & June R. Gassaway, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

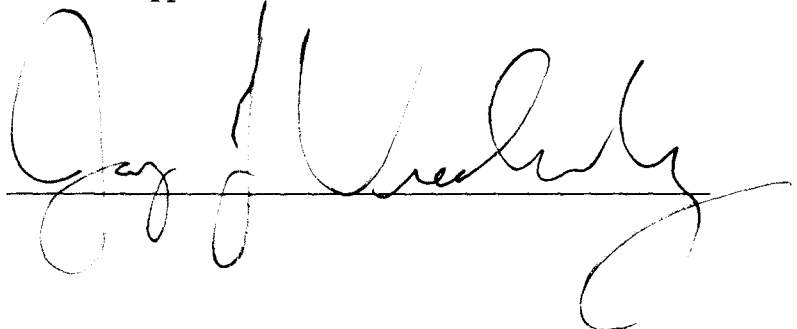
Joseph N. & June R. Gassaway  
159 Mountainview Dr.  
Mountainside, NJ 07092

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  
8th day of August, 1979.





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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

August 8, 1979

Joseph N. & June R. Gassaway  
159 Mountainview Dr.  
Mountainside, NJ 07092

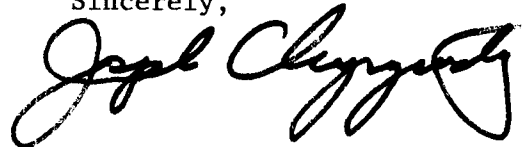
Dear Mr. & Mrs. Gassaway:

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,



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 :  
JOSEPH N. GASSAWAY and JUNE R. GASSAWAY : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1972. :

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Petitioners, Joseph N. Gassaway and June R. Gassaway, 159 Mountainview Drive, Mountainside, New Jersey 07092, 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 1972 (File No. 14069).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 8, 1978 at 9:15 A.M. Petitioner Joseph N. Gassaway appeared pro se and for his wife. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

#### ISSUES

I. Whether days worked at home by petitioner Joseph N. Gassaway, in the service of his New York employer, were allocable as days worked without New York State for personal income tax purposes.

II. Whether the overriding commissions paid to petitioner Joseph N. Gassaway by Indiana Glass Company, as a result of commissions earned by salesmen who were under his direction and who performed services outside New York State, were allocable to sources outside New York State.

III. Whether the Income Tax Bureau correctly computed petitioner's income, considering Saturdays and Sundays as being worked outside New York State.

FINDINGS OF FACT

1. Petitioners, Joseph N. Gassaway and June R. Gassaway, timely filed a New York State personal income tax nonresident return for 1972. On said tax return, petitioner Joseph N. Gassaway allocated his wage income in Schedule A-1 to sources within and without New York State.

2. The Income Tax Bureau recomputed petitioner Joseph N. Gassaway's wage income from information which he submitted on Form IT-2332 (Questionnaire - Allocation of Personal Service Compensation). It included as days worked in New York, eight days which petitioner worked at his home in New Jersey and which he had allocated as days worked outside New York State. On February 24, 1976, the Income Tax Bureau issued a Notice of Deficiency for 1972 against petitioners for \$956.01 in personal income tax, plus \$205.27 in interest, for a total of \$1,161.28.

3. Petitioner Joseph N. Gassaway performed services as an employee of the Indiana Glass Company at its New York office. Indiana Glass Company did not have an office in New Jersey. Petitioner was employed in the capacity of regional sales manager of a territory which included New York, New Jersey, Washington, D.C., Maryland, Virginia and North Carolina. He sold glassware to retail stores and also supervised the activities of six or seven commission salesmen who were employed by Indiana Glass Company in his territory. Petitioner was paid a salary of approximately \$12,500.00 in 1972, plus a 1% override on all commissions issued within his sales territory.

4. Petitioner worked eight days at his home in New Jersey during 1972. He conceded that the services which he performed at home for Indiana Glass Company could have been performed at the New York office of said employer.

5. Petitioner contended that Saturdays and Sundays worked outside New York State at trade shows were not included in the computation of the deficiency. Documentary evidence submitted to the Income Tax Bureau by petitioner indicated that he worked 42 days outside New York State and that of these 42 days, 21 were Saturdays and Sundays. A correct recomputation of petitioner's New York source income would result in a slightly higher deficiency.

#### CONCLUSIONS OF LAW

A. That the eight days worked at home in New Jersey by petitioner Joseph N. Gassaway during 1972 were worked there by reason of his own necessity or convenience and not for the necessity of his employer; therefore, they should not be considered days worked outside New York State, in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

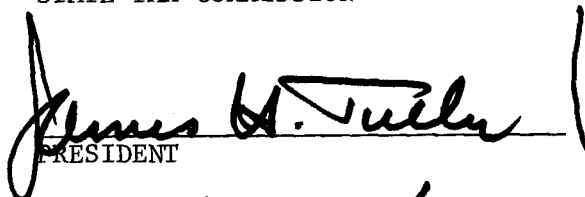
B. That overriding commissions received by petitioner Joseph N. Gassaway constituted compensation for services performed as an employee of Indiana Glass Company in his capacity as regional sales manager, and that said compensation was paid to him for the services he performed and not for the services of the salesman he directed; therefore, the allocation of petitioner's total wage and overriding commission income must be made on the basis of days worked within and without New York State, in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

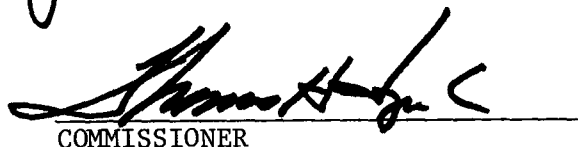
C. That the amount of the deficiency computed by the Income Tax Bureau, including 21 Saturdays and Sundays worked without New York State, was substantially correct.

D. That the petition of Joseph N. Gassaway and June R. Gassaway is denied and the Notice of Deficiency issued February 24, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
August 8, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER