

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SIDNEY HELLER and FRANCES HELLER

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 ~~XXXXXXX~~ or Period(s) 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 24th day of January, 19 79, He served the within

Notice of Decision by (certified) mail upon Sidney & Frances Heller

~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,

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

as follows: Sidney & Frances Heller
34 Tompkins Road
East Brunswick, New Jersey 08816

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

Sworn to before me this

24th day of January, 19 79.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SIDNEY HELLER and FRANCES HELLER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (8) 22 of the :
Tax Law for the Year ~~(XXXXXX Period)~~ 1972. :

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 24th day of January, 1979, she served the within
Notice of Decision by (certified) mail upon Herbert Tuteur, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Herbert Tuteur, CPA
20 Evergreen Place
East Orange, New Jersey 07018
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

24th day of January, 1979.

Marilyn J. Papineau

John Huhn



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

January 24, 1979

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

Sidney & Frances Heller
34 Tompkins Road
East Brunswick, New Jersey 08816

Dear Mr. & Mrs. Heller:

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 ~~(5)~~ **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 CHYRYWATY
HEARING EXAMINER

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
SIDNEY HELLER and FRANCES HELLER : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1972. :
:

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 18, 1978 at 1:15 P.M. Petitioners appeared by Herbert Tuteur, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

Whether petitioner Sidney Heller was entitled to an allocation of wages to sources outside New York State.

1. Petitioners, Sidney Heller and Frances Heller, timely filed a New York State personal income tax nonresident return for 1972,

on which petitioner Sidney Heller allocated his wage income on the basis of days worked within and without New York State.

2. On December 27, 1974, the Income Tax Bureau issued a Statement of Audit Changes, on which it disallowed an allocation of wage income, since petitioners failed to reply to several letters requesting information. Other adjustments made to petitioners' tax return have been resolved and are not at issue. On September 29, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioners, asserting personal income tax of \$1,288.38, plus interest of \$237.46, for a sum of \$1,525.84.

3. From information supplied by petitioners' representative and set forth as part of the petition, the Income Tax Bureau accepted twenty days reported thereon as days worked outside New York State. It also allocated the income derived from fifteen days reported as days worked at home in New Jersey as being attributable to New York sources. At the hearing, the Bureau submitted a recomputation of the tax due (Exhibit G), reflecting these changes and adjusting the additional personal income tax due from \$1,288.38 to \$825.61. This amount was further reduced to \$815.37, due to the payment of tax and interest as a result of changes made by the Internal Revenue Service.

4. Petitioners conceded that the income derived from days worked at home was allocable as New York source income and accepted,

as correct, the schedule (Exhibit G) submitted. However, petitioners contended that additional days, other than the twenty days reported as worked outside New York, should have been allowed, but did not submit documentary or any satisfactory evidence to support this contention.

CONCLUSIONS OF LAW

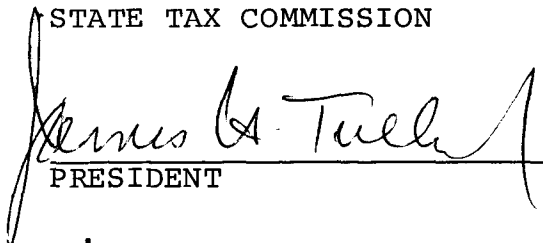
A. That petitioner Sidney Heller worked twenty days outside New York State during 1972 and, therefore, is entitled to allocate a portion of his wage income to sources without New York State.

B. That the petition of Sidney Heller and Frances Heller is granted to the extent that the personal income tax due is reduced from \$1,288.38 to \$815.37; that the Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued September 29, 1975 and that, except as so granted, the petition is in all other respects denied.

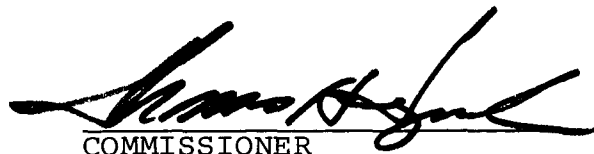
DATED: Albany, New York

January 24, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER