

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY T. LURIA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article ~~(a)~~ 22 of the  
Tax Law for the Year(s) ~~or Period(s)~~  
1972 and 1973

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 24<sup>th</sup> day of January , 1979 , she served the within  
Notice of Decision by (certified) mail upon Henry T.

Luria ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Henry T. Luria  
Pecksland Road  
Greenwich, CT 06830

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

24<sup>th</sup> day of January , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY T. LURIA

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 (s) ~~1972 and 1973~~ :  
1972 and 1973

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that  
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24<sup>th</sup> day of January , 1979 , ~~she~~ he served the within  
Notice of Decision by (certified) mail upon Allen H.  
Toby (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Allen H. Toby, Charles Hecht & Co.  
595 Madison Avenue  
New York, NY 10022

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

24<sup>th</sup> day of January , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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HENRY T. LURIA

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(s) ~~1972 and 1973~~  
1972 and 1973

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that  
~~she~~ he 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~~ he served the within  
Notice of Decision by (certified) mail upon David Darlow, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: David Darlow, Esq.  
Cutler & Cutler, Esqs.  
150 East 58th Street  
New York, NY

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 , 19 79

Marilyn J. Papineau

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

**January 24, 1979**

**Mr. Henry T. Luria  
Fockland Road  
Greenwich CT 06830**

**Dear Mr. Luria:**

Please take notice of the **Notice of Decision** of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section **§ 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 **four 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,

**Michael Alexander  
Supervising Tax  
Hearing Officer**

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  
HENRY T. LURIA  
for Redetermination of a Deficiency or  
for Refund of Personal Income Tax under  
Article 22 of the Tax Law for the Years  
1972 and 1973.

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DECISION

Henry T. Luria, Pecksland Road, Greenwich, Connecticut 06830, 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 1972 and 1973 (File No. 12221).

A formal hearing was held before George Murphy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 11, 1977 at 9:45 A.M. Petitioner appeared by Cutler & Cutler, Esqs. (David Darlow, Esq., of counsel) and by Charles Hecht & Co. (Allen H. Toby, CPA). The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner was an independent contractor or an employee in connection with his activities on behalf of British Steel Corporation, Inc. during the years in issue.

II. Whether petitioner, a nonresident, is entitled to an allocation of income to sources outside New York State, with respect to the compensation received from British Steel Corporation.

III. Whether income received by petitioner in 1973 was attributable to New York sources.

FINDINGS OF FACT

1. Petitioner, Henry T. Luria, filed New York State income tax nonresident returns for 1972 and 1973. For 1972 petitioner reported total Federal income of \$146,346.00 and total New York income of \$35,324.00. For 1973 petitioner reported total Federal income of \$159,736.00 and zero income for New York.

2. On January 26, 1976, the Income Tax Bureau issued a Statement of Audit Changes against petitioner for 1972 and 1973. Said Statement imposed additional tax due of \$5,203.05 and \$6,071.15 for the respective years 1972 and 1973, for a total of \$11,274.20, plus interest of \$1,898.27, for a grand total of \$13,172.47. The basis for the adjustments as indicated on the Statement of Audit Changes is as follows:

"Despite the use of the term "Independent Contractor" in your contract with British Steel, because of the extreme degree of control and direction British Steel has over your sales activities, we consider you to be an employee of the firm. We therefore consider your "Consultant Fees" to be wages. (Regulation 31.3401(c)-1(b), IRS Regulations; Section 632(a)(1) and (b)(2), New York State Income Tax Law).

Because days worked at home are considered days worked within New York State for wage allocation purposes, we are including all of your income from British Steel in your total New York income. (Regulation 131.16, New York State Income Tax Regulation)."

Accordingly, a Notice of Deficiency for \$13,172.47 was issued against petitioner who then timely filed a petition for re-determination thereof.

3. At the hearing held on February 11, 1977, the representative for petitioner submitted a claim for refund of \$2,347.78 for 1972.

4. Prior to 1972 petitioner, Henry T. Luria, was a principal shareholder and officer of Luria Steel and Trading Corp. ("LST"), with offices in New York City. The aforementioned corporation was appointed independent sales representative for two steel manufacturers located in Great Britain, namely, Steel Company of Wales and United Steel Companies of Great Britain. In 1967 the steel industries in Great Britain were nationalized. As a result, the companies represented by LST were merged with other steel companies and continued to be operated and controlled by a United Kingdom corporation known as British Steel Corporation ("BSC") whose offices were located in London, England. LST continued to act as an independent sales representative.

5. In the latter part of 1971, petitioner was advised that BSC had decided to discontinue having independent sales representatives in the United States and abroad. BSC was also interested in acquiring certain assets of LST and the business of Luria Corp., as it related to the products manufactured by BSC. In connection with the aforementioned purchase of said business, petitioner entered into a consultant's agreement with British

Steel Corporation, Inc., a New York corporation with headquarters in New York City ("BSC, Inc."), effective April 15, 1972 until October 25, 1974 or unless sooner terminated.

6. The agreement provided, in part, that the services rendered by petitioner were to be performed as an independent contractor and not as an employee; that BSC, Inc. was to pay petitioner \$6,250.00 per month and would provide him with offices at its headquarters and would reimburse him for travel and out-of-pocket expenses; that petitioner was to report directly and be responsible to the chief executive officer of BSC, Inc.; that petitioner was to advise BSC, Inc. concerning methods of dealing with customers of BSC products and do all such reasonable things as BSC, Inc. may request, to ensure the proper introduction of designated BSC, Inc. personnel to the affairs and personnel of such customers; that petitioner was to devote his full time to the affairs of BSC, Inc. except that he was not to devote more than 30 business days per year to the affairs of other corporations in which he was officer, director or employee. The agreement contained a restrictive covenant requiring petitioner not to render any consulting or advisory services or to become a director, officer, employee or agent of any organization which competes with BSC, Inc. unless the latter, in writing, agreed to do so.

7. BSC, Inc. did not withhold income or social security taxes on the compensation paid to petitioner.

8. On or about Christmas of 1973, BSC, Inc. closed its New York offices and removed its operations to Houston, Texas.



9. On his New York State nonresident return for 1972, petitioner indicated that 75 days were worked in New York State in said year and 139 days were worked outside the State, namely at his home in Greenwich, Connecticut. Petitioner reported wages received from Luria Steel & Trading Corporation in said year in the amount of \$47,666.64.

10. On a rider attached to his nonresident return for 1973, petitioner stated:

"He is president of Luria Steel and Trading Corporation and is also employed as a consultant by British Steel Corporation. He received \$75,000.00 from each of these companies in 1973.

During the year 1973 taxpayer did not work in New York at all but performed all his services for both companies from his home in Greenwich or at the Stamford office of Luria Steel and Trading Corp."

The W-2 receipt from Luria Steel and Trading Corporation indicated New York State wages paid (\$75,000.00) and New York State tax withheld of \$2,625.00, as well as New York City tax withheld of \$337.50.

11. Petitioner failed to present sufficient evidence to prove that his relationship with BSC, Inc. during 1972 and 1973 was not that of employer/employee, but rather that of an independent contractor.

#### CONCLUSIONS OF LAW

A. That although the agreement between petitioner and BSC, Inc. designated him as an independent contractor and he was treated as such for payroll purposes, petitioner was in fact an employee and not an independent contractor.

B. That the services performed at home by petitioner for BSC, Inc. during the years in issue constitute days worked within New York State, since such services performed at home were for the greater convenience of the petitioner, in accordance with the meaning and intent of 20 NYCRR, section 131.16. (Speno v. Gallman, 35 N.Y. 2d 256, Page v. State Tax Comm., 46 AD 2d, 341)

C. That the compensation received by petitioner, Henry T. Luria, from BSC, Inc. during the years in issue was attributable to New York sources and that petitioner is not entitled to an allocation thereof.

D. That the claim for refund for 1972 filed on the date of the hearing was not filed within the statutory time period, in accordance with the meaning and intent of section 687 of the Tax Law. In any event, Conclusions of Law "A", "B" and "C", supra, would also require that the claim for refund be denied.

E. That the income received by petitioner in 1973 from BSC, Inc. and LST Corp. was attributable to New York sources.

F. That the petition of Henry T. Luria for 1972 and 1973 be and the same is hereby denied.

DATED: Albany, New York  
January 24, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER