

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Francis A. & Kathleen M. Speer :

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 Year 1970. :

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 31st day of August, 1979, he served the within notice of Default by certified mail upon Francis A. & Kathleen M. Speer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Francis A. & Kathleen M. Speer

1280 Virginia Ave.

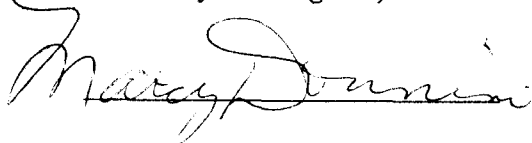
Mountainside, NJ 07092

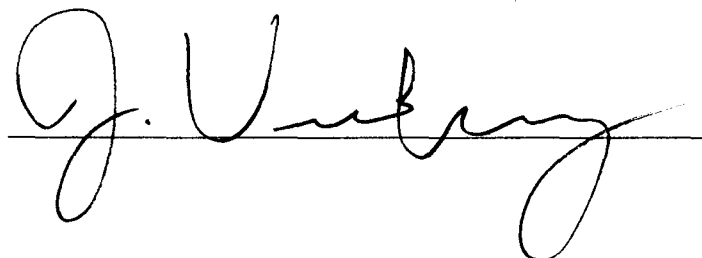
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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

31st day of August, 1979.







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 31, 1979

Francis A. & Kathleen M. Speer  
1280 Virginia Ave.  
Mountainside, NJ 07092

Dear Mr. & Mrs. Speer:

Please take notice of the Default Order of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 690 of the Tax Law, any proceeding in court to review this decision must be commenced 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.

Very truly yours,  
*Victoria A. Gary*

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
FRANCIS A. SPEER and KATHLEEN M. SPEER  
for Redetermination of Deficiency or for Refund of  
Personal Income  
Taxes under Article (X) 22 of the Tax Law for the  
Year (X) 1970

DEFAULT ORDER

Petitioner(s) Francis A. Speer & Kathleen M. Speer, Carthage Arms, Apt #6  
Carthage, New York 13619 filed a petition for redetermination of deficiency  
or for refund of Personal Income taxes under Article (X)  
22 of the Tax Law for the year (X) 1970 . File No. (X) 13862

A Small Claims Hearing on the petition was scheduled before  
William Valcarcel, Hearing Officer , at the offices of the State  
Tax Commission, Two World Trade Center, 65th Floor, Room 65-51, New York, New York  
on Friday, March 9, 1979 at 10:45 A.M. . Notice of said Small Claims  
Hearing was given to petitioner(s) ~~and to petitioner(s) representative,~~

. Petitioner(s) ~~and to petitioner(s) representative~~ did  
not appear at the Small Claims Hearing . A default has been duly noted.

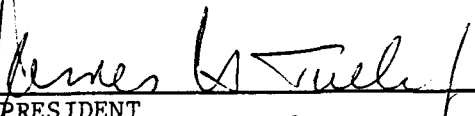
Now on motion of the attorney for the Department of Taxation and Finance,  
it is


ORDERED that the petition of FRANCIS A. SPEER and KATHLEEN M. SPEER  
be and the same is hereby denied.

DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



New York State Department of  
**TAXATION and FINANCE**  
TAX APPEALS BUREAU

To ..... Mr. Coburn .....

Better address. Remailed 9/14/79

9/14/79

Joseph Chyrywaty

M-75 (5/76)

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS A. SPEER and KATHLEEN M. SPEER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
~~XX~~  
of Personal Income :  
Taxes under Article ~~(XX)~~ 22 of the :  
Tax Law for the Year ~~(XXXXXXXXXXXXXXXXXXXX)~~ 1970:

State of New York  
County of Albany

Jay Vredenburg , 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 14th day of September , 19 79, ~~she~~ served the within  
Notice of Default Order by ~~XXXXXX~~ mail upon Francis A. Speer and  
Kathleen M. Speer ~~(XXXXXXXXXXXXXXXXXXXX)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Francis A. and Kathleen M. Speer  
Carthage Arms Apt. #6  
Carthage, New York 13619  
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~~  
~~XXXXXXXXXXXX~~ 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

14th day of September , 19 79

nehan Friedman

Jay G. Vredenburg

REQUEST FOR BETTER ADDRESS

Requested by <i>Lynne Luce</i>	Unit <i>Tax Appeals Bureau Rm 102, Bldg 9</i>	Date of Request <i>9/10/79</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>164-09-6675</i>	Date of Petition <i>7/3/01/16</i>
Name <i>SPEER, FRANCIS A. + KATHLEEN M.</i>	
Address <i>1250 VIRGINIA AVENUE MOUNTAIN SIDE, NJ 07097</i>	

## Results of search by Files



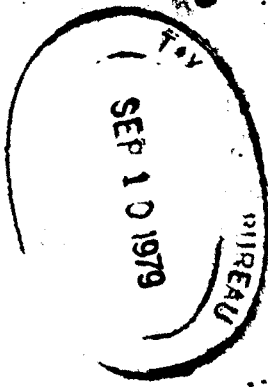
<input checked="" type="checkbox"/> New address:	<i>CARTHAGE APT 116 CARTHAGE, N.Y. 13119</i>
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by <i>CL</i>	Section <i>M.I.</i>	Date of Search <i>9-13-79</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

Francis A. & Kathleen M. Speer  
1280 Virginia Ave.  
Mountainside, NJ 07092





State of New York  
Department of  
**TAXATION and FINANCE**  
Albany, New York 12227

Paul B. Coburn  
Secretary to the  
State Tax Commission

September 30, 1980

Price Waterhouse & Company  
986 Bedford Street  
Stanford, Connecticut 06905

RE: FRANCIS A. & KATHLEEN M. SPEER

Gentlemen:

Please be advised that State Tax Commissioner Thomas H. Lynch has vacated the default order entered against your client, Francis A. and Kathleen M. Speer.

I have this date advised the Tax Appeals Bureau that the default order has been vacated. They will reschedule the matter for a hearing.

Sincerely,



PAUL B. COBURN

Secretary to the State Tax Commission

PBC:mac

cc: John Sollecito, Director  
Tax Appeals Bureau

Michael Alexander  
Law Bureau

DEPARTMENT OF TAXATION AND FINANCE  
MEMORANDUM

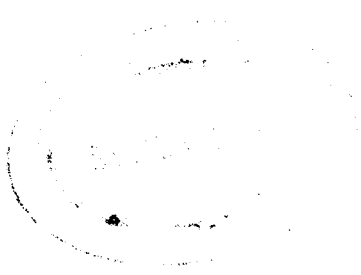
TO: Paul Coburn,

Re: Francis A. & Kathleen M. Speer  
Request to reopen default

The default should be vacated.

THL

9/26/80  
Attachment--corresp.



Thomas H. Lynch  
Tax Commissioner



986 BEDFORD STREET  
STAMFORD, CONNECTICUT 06905  
203-325-2623

August 28, 1980

Secretary to the State Tax Commission  
Department of Taxation and Finance  
Room 214-A, Building 9  
State Campus  
Albany, New York 12227

Dear Sir:

FRANCIS A. AND KATHLEEN M. SPEER  
169-09-6675  
1970

The above-named taxpayers hereby seek relief from a default order dated August 31, 1979 entered in the Matter of their Petition for Redetermination of Deficiency of personal income tax under Article 22 of the Tax Law for the year 1970. The enclosed memorandum and exhibits will show that there exist both a valid excuse for the default and a meritorious defense for the positions taken in their return. Even if there were not a valid excuse for default and a meritorious defense for the positions taken in their return, it is submitted that the State has failed to exercise reasonable diligence in responding to the taxpayers' petition to such an extent that it should be prohibited from asserting any deficiency.

The relief sought is alternatively either: 1) that the State be barred from collecting the assessed deficiency because of its failure to decide the taxpayers' case as quickly as practicable, 2) that the default be reopened and the taxpayers' petition be granted as filed because of the State's failure to respond to the petition in accordance with its own regulations, or 3) that the default be reopened and the taxpayers be given an opportunity to contest the deficiency because there is a valid excuse for the default and a meritorious defense for the positions taken in the return.

Any correspondence relating to this matter should be sent to Mr. Arthur B. Cilley of this office.

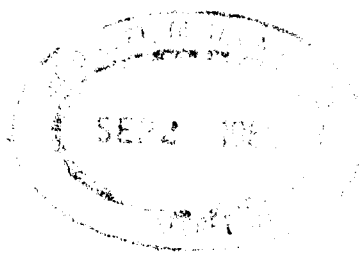
Thank you for your cooperation.

Yours very truly,

*Price Waterhouse & Co.*

Enclosures -  
As stated

cc: Mr. & Mrs. Francis A. Speer



FRANCIS A. AND KATHLEEN M. SPEER

169-09-6675

1970

Background

A deficiency of \$1,444.82 was assessed against the taxpayers with respect to their 1970 New York State nonresident income tax return. The issue concerned the treatment of days worked outside New York State by Mr. Speer at his home in Mountainside, New Jersey.

In response to a letter dated January 4, 1974 from Gabriel B. DiCerbo, Chief-Regulations and Interpretations Section, Income Tax Bureau, the taxpayers completed Form IT-95, Item #4, and had their signatures notarized on January 14, 1974. This form was sent to the State Tax Commission and to the best of their knowledge perfected the petition for redetermination of deficiency in accordance with the provisions of Reg. Sec. 601.5 of the Procedural Regulations of the State Tax Commission.

To the best of the taxpayers' recollection, no further communication was received from New York State concerning this matter until on or about May 25, 1980 when they received a Notice and Demand for Payment of Income Tax Due dated May 22, 1980. In the intervening period, the taxpayers discarded their 1970 tax records in the good faith belief that the matter had been dropped by the State.

Excuse for default

As stated above, no communications relating to the 1970 petition were received after January 1974 until May 1980. In particular, the Amended Notice of Small Claims Hearing dated February 15, 1979 was never received. A copy of this document was furnished to an employee of our firm in June 1980 by Mr. Donald Lounsbury of Audit Group 5. It appears from a notation in the bottom right hand corner of the notice, which reads "This amended notice contains taxpayers' current address," that an earlier notice was sent to a different address. In view of the fact that the earlier notice was evidently not received by the taxpayers, the State should have taken greater efforts than usual to be sure that the amended notice was received. If the State has evidence that the amended notice was received, such as a certified mail receipt, the State should be required to produce it.

Sec. 689 of the Tax Law provides that "no petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice." Where the State has taken more than five years from the time of its last communication, is aware of the taxpayers' change of address, and is aware that the new residence is within New York State so that notice by personal service is made readily available, reasonable prior notice surely requires more than a simple letter sent by ordinary mail with no proof of receipt.

Because the taxpayers have no recollection of receiving the notice of hearing and the State has not proved that they did receive such notice, there is a valid excuse for the default.

Meritorious defense for positions  
taken in return

A nonresident of New York is taxable on items of income from New York sources. Sec. 632 (b)(1)(B) of the Tax Law states that income from New York sources includes income attributable to a business trade, profession or occupation carried on in New York. Sec. 632 (c) states that if an occupation is carried on partly within and partly without the State, income therefrom shall be apportioned according to regulations.

Reg. Sec. 131.4 states the general rule that compensation for personal services rendered by a nonresident employee without New York is not taxable. Reg. Sec. 131.16 states that if a nonresident employee performs services for his employer both within and without the State, his income derived from New York sources includes only that proportion of his total compensation for services rendered as an employee which the total number of working days employed within the State bears to the total number of working days employed both within and without the State.

It has been held that days worked without the State solely for the convenience of the employee are not counted as days worked without the State. Morehouse v. Murphy et al., 10 A.D. 2d 764(1960). The information in Item #4 of Form IT-95 indicates that Mr. Speer's situation was clearly distinguishable from the situation in Morehouse. Supporting information and a confirmatory letter from the employer are apparently included in the taxpayers' file.

Inasmuch as a meritorious defense exists and is supported by information in the State's possession, it is requested that the information be provided to the taxpayers so that the issues may be presented and resolved as fully and fairly as possible.

Failure to exercise reasonable  
diligence

Sec. 689 of the Tax Law provides that "proceedings before the tax commission in any case initiated by the filing of a petition, shall be governed by such rules as the tax commission shall prescribe." The section further provides that "the tax commissioners shall, acting as a body, jointly decide the case as quickly as practicable."

Reg. Sec. 601.5(a) provides:

Where the Secretary determines that the petition is properly perfected, he will immediately forward it, along with the file, to the Law Bureau for preparation of the answer. The time within which the Law Bureau must answer the petition shall start to run from the date of the notice to the petitioner that the original petition is acceptable as a perfected petition or from the date of service of the perfected petition on the Secretary, unless the Secretary notifies the petitioner within 20 days after service upon him that the perfected petition is not acceptable.

Reg. Sec. 601.6(a)(1) provides that the Law Bureau shall serve the answer 60 days from the date the Secretary acknowledges receipt of an acceptable perfected petition.

The taxpayers did not receive an answer within 60 days from the date of service on the Secretary of the perfected petition. Indeed, they did not receive an answer within six years from the date of service on the Secretary of the perfected petition. The Commission has therefore failed to observe its own regulations.

It is further submitted that this extraordinary delay at such an early stage of the proceeding violates the legislative mandate that the case should be decided as quickly as practicable. In reliance on this extraordinary delay the taxpayers disposed of their records relating to the tax year involved on the understanding that the matter had been dropped. It would be unreasonable to require that they reestablish a case for the positions taken in their return when, as a result of the State's delay, the relevant facts and supporting evidence are so far in the past. Accordingly, the State should be barred from collecting the alleged deficiency.

Stamford, Connecticut  
August 28, 1980

## NOTICE AND DEMAND FOR PAYMENT OF INCOME TAX DUE

PERIOD OR YEAR	DATE OF ASSESSMENT	FILES REFERENCE NO.	ASSESSMENT NO.
1970	05-22-80	53031125	A8004061401

169-09-6675

SPEER-FRANCIS A & KATHLEEN M  
-CARTHAGE ARMS APT#6  
CARTHAGE NY 13619

THIS IS A NOTICE AND DEMAND FOR PAYMENT OF THE AMOUNT DUE SHOWN ON THE LINE BELOW.

PERSONAL INCOME TAX	1,444.82	UNINCORPORATED BUSINESS TAX	.00	TOTAL TAX	1,444.82	INTEREST	173.03
PENALTY	.00	PENALTY	.00	TOTAL PENALTY	.00	TOTAL TAX, PEN. & INT.	1,617.85
						PREVIOUSLY PAID	.00
						UNPAID BALANCE	1,617.85
						ADDITIONAL PEN. AND/OR INT.	616.06
						AMOUNT DUE	2,233.91

- KEEP THIS NOTICE FOR YOUR RECORDS -

▲ PAY THIS AMOUNT ▲

The reasons for the AMOUNT DUE are as follows:

FAILURE TO PAY AMOUNT DUE AS PREVIOUSLY SHOWN ON STATEMENT OF AUDIT  
CHANGES OR NOTICE OF ADDITIONAL TAX DUE.

PENALTY AND INTEREST CHARGES (IF APPLICABLE) HAVE BEEN ADDED IN ACCORDANCE WITH THE NEW YORK STATE TAX LAW.

Return ONE COPY OF THIS NOTICE WITH YOUR REMITTANCE made payable to the State Tax Commission in the enclosed envelope. Write the assessment number shown above on your remittance. Keep one copy of this notice for your records.

• If this notice is not paid within 10 days, additional interest and penalty will accrue

COMMISSIONER



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

JOHN J. SOLLECITO  
DIRECTOR

Please address  
your reply to:

Telephone: (518) 457-1723

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT

MILTON KOERNER

THOMAS H. LYNCH

STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS A. SPEER and KATHLEEN M. SPEER

for a Redetermination of a Deficiency or for  
Refund of Personal Income Taxes under  
Article(s) 22 of the Tax Law for the  
Year(s) 1970.

AMENDED  
NOTICE OF SMALL CLAIMS HEARING

*Received  
6/20/80*

NOTICE IS HEREBY GIVEN that, pursuant to provisions of the Tax Law (Section(s) 689), a small claims hearing is scheduled to be held in the above-entitled matter at the offices of the State Tax Commission, Two World Trade Center, 65th Floor, Room 65-51, New York, New York, on Friday, March 9, 1979 at 10:45 A.M.

The petitioner has the burden of proof and must establish by a preponderance of the evidence all facts necessary to show that there is no deficiency, or that a refund is due.

Such proof may be made by sworn testimony of the petitioner or his witnesses or by documentary or other written evidence to be introduced during the course of the formal hearing.

Failure to appear at the scheduled hearing may result in dismissal of the petition. Adjournment may be requested but will be granted only for good cause and only to such time and place as the State Tax Commission finds appropriate.

Handicapped persons who may require assistance in gaining access to this building are requested to so advise the Tax Appeals Bureau at (518) 457-1723, Ext. 20, within two (2) weeks from the date of this notice.

PETITIONER: Mr. & Mrs. Francis A. Speer  
Carthage Arms Apt. #6  
Carthage, NY 13619

DATED: Albany, New York  
February 15, 1979

cc: Petitioner's Representative:  
None

STATE TAX COMMISSION

BY:

*Joseph Chynoweth*  
JOSEPH CHYNOWETH  
HEARING EXAMINER

Taxing Bureau's Representative

In the amount of \$ 16,172.85

EXHIBIT IV

OR

Refund of \$ \_\_\_\_\_ is requested. Notice of disallowance was dated \_\_\_\_\_

OR

Refund of \$ \_\_\_\_\_ is requested. No notice of disallowance has been received, but claim for such refund was filed on or about \_\_\_\_\_, 19 \_\_\_\_.

4. Each ground upon which redetermination of the deficiency or refund is claimed, and the facts relied upon to inform the State Tax Commission of the exact basis thereof, are as follows: (Attach additional sheets if required.)

Compensation for the months of Oct, Nov, & Dec. 1970 have been erroneously evaluated and interpreted.

During this period I was paid by CRANE Co. to be available for consultation and special assignment. The nature of this arrangement did not require my presence in New York, however I was in a daily work status outside the state.

This period should be classified as days worked outside New York and is supported by detailed explanation and a confirming letter from my employer in your files.

5. No petition for redetermination of deficiency or for refund has heretofore been filed with the State Tax Commission in respect of any of the items hereinbefore stated, nor has any redetermination of deficiency or refund been previously granted thereon.

Francis A. Speer  
Kathleen M. Speer  
(Signature of taxpayer or representative)

Sworn to before me

this 14<sup>th</sup> day of June

19 74

Lawrence L. Lerner  
My Commission Expires April 1, 1975

NOTE: If petition is signed by any person other than the taxpayer, it must be accompanied by a duly executed power of attorney unless either (1) a power of attorney has already been filed, or (2) the taxpayer is a minor whose return was filed by the person signing the petition or is mentally or physically incapable of signing.

A petition may be filed covering more than one taxable year only if the taxpayer has received a notice of deficiency or notice of disallowance of refund covering all years to which the petition relates.

*Co*

(518)427-2277

Francis A. and Kathleen M. Speer  
1230 Virginia Avenue  
Mountainside, New Jersey 07092

JAN 4 1978

RE: Petition to State Tax Commission  
Tax Year 1973  
File 60-53031125

Dear Mr. and Mrs. Speer:

This will acknowledge the petition form received in connection with the above tax year. In order to perfect this petition it is necessary the signature be notarized. Accordingly, we are returning a copy of the petition so that the proper notarization may be made.

The basis for filing the petition have not been stated as required under Item 64, back of Form IT-95.

As soon as a perfected petition has been received further consideration will be given.

All correspondence should refer to Division 50, P.O. Box 5048, Albany, N. Y., 12255. An envelope is enclosed for your convenience.

Very truly yours,

Gabriel B. Picerbo, Chief  
Regulations & Interpretations Section  
Income Tax Bureau

FLC/nd  
Enc: 1 IT-95  
Envelope

STATE OF NEW YORK  
STATE TAX COMMISSIONP.O. BOX 5028  
Albany, N.Y. 12205PETITION  
FOR REDETERMINATION OF DEFICIENCY OR FOR REFUND OF  
PERSONAL INCOME TAX OR UNINCORPORATED BUSINESS TAX  
FOR THE YEAR(S) 19Social Security No. 169-09-6675  
or  
Employer Identification No. \_\_\_\_\_Taxpayer Francis A. and Kathleen M. SPEERAddress Same as Return  
(Same as on return - also, state present address if different)

Taxpayer's representative, if any \_\_\_\_\_

Address \_\_\_\_\_

(A taxpayer's representative cannot ordinarily be  
recognized unless a power of attorney is on file;  
see footnote to this form.)RECEIVED  
NEW YORK STATE  
INCOME TAX BUREAU  
JUL 16 1973  
REVIEW UNIT  
ALBANY OFFICESTATE OF )  
COUNTY OF ) ss:I (We), \_\_\_\_\_, the taxpayer(s)  
or representative above named, being duly sworn, do hereby petition for redetermination of de-  
ficiency or for refund of tax paid, pursuant to section 689 of the New York State Tax Law, and in  
support of such application state as follows:1. The tax in question is for the taxable year(s) or period(s) 19702. The total amount of tax paid for each year or period is \$1005.00

4-29-80

STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
Income Tax Bureau  
State Campus  
Albany, N.Y. 12227  
STATEMENT OF AUDIT CHANGES

EXHIBIT VII

O

APR 13 1973

Date

FRANCIS A. SPER AND  
EATHLECH H. SPER, HIS WIFE  
6880 Mt. Italia Ave.  
Mountain View, N.J. 07092

CARTHAGE ARMS, APT. #6  
CARTHAGE, N.Y. 13619

File Number : 0-53031125  
Taxable Year(s) : 1970  
S.S. No. Taxpayer: 199-09-6675  
S.S. No. Spouse : 172-14-5433  
DIVISION NO. : 441 50

## Explanation:

Days at home are not a proper basis for allocation of salary income. Since the information submitted indicates that you were considered a full time employee of Crane Company for the months of October, November and December, 1970 and that the services rendered during this period were services which could have been rendered at your employer's New York place of business, no allocation of salary income is allowed for days spent at home for those months. Corrected computation of New York salary is shown below.

Total days in year,	365
Nonwork days	122
Total work days	243
Days worked outside New York State	97
Days worked in New York State	146

$146 \times \$55,000.00 =$ New York salary	\$80,300.00
$243$	
$\$80,300.00 \times \$5,711.00 =$ Itemized deduction	4,607.00
$\$80,300.00$	
Balance	\$75,693.00
Exemption	1,000.00
Taxable income	\$74,693.00

Tax on the above income	\$2,474.82
Statutory credit	33.00
Tax due	\$2,441.82
Tax computed	1,000.00

ADDITIONAL PERSONAL TAX DUE

\$1,441.82

JTC/ck

PAYMENTS RECEIVED				Interest TOTAL DUE	ASSESSMENT AMOUNTS
1.	2.	3.	4.		
DATE CONSENT RECEIVED <u>NONE</u>				INTEREST INSTRUCTIONS.	
NOTICE AND DEMAND AUTHORIZED BY:				PERSONAL INCOME	
R. J. Sullivan 4-29-80				PENALTY	
CONTROLLING DATE				UBI	
STATE OF LIMITATIONS				PENALTY	