

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Harry M. & Nora Dorn :

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 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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Theodore Harris 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. Theodore Harris  
51 Madison Ave.  
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  
3rd day of October, 1980.

Robert Bank

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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Sworn to before me this  
3rd day of October, 1980.

Richard Brink

J. Vredenburg

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

October 3, 1980

Harry M. & Nora Dorn  
2055 Arch Creek Dr.  
North Miami, FL 33161

Dear Mr. & Mrs. Dorn:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Theodore Harris  
51 Madison Ave.  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
HARRY M. DORN and NORA DORN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1971.	:	

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Petitioners, Harry M. Dorn and Nora Dorn, 2055 Arch Creek Drive, North Miami, Florida 33161, 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 1971 (File No. 13149).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 11, 1977 at 10:30 A.M. Petitioners appeared by Theodore Harris, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether the time spent by petitioner Harry M. Dorn, during 1971 at his home in Florida doing work for Harry M. Dorn Inc., a New York corporation, is allocable as days worked outside New York State.

FINDINGS OF FACT

1. Petitioner Harry M. Dorn and his wife, petitioner Nora Dorn, filed a New York State Income Tax Nonresident Return 1971 (Form IT-203). On schedule A-1, "Allocation of wage and salary income to New York State", they claimed that out of a total of 235 days worked in 1971, petitioner Harry M. Dorn worked 215 days outside New York State and 20 days within New York State. On

that basis, petitioners allocated \$3,064.00 to New York State out of Harry M. Dorn's total salary income of \$36,000.00 for 1971, said \$3,064.00 being 20/235ths of said salary income of \$36,000.00.

2. On May 20, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Harry M. Dorn and Nora Dorn, revising their allocation of income for 1971 by allocating all of it to New York State, on the grounds that "time spent at home is not a proper basis for allocation of income to outside New York State". Accordingly, a Notice of Deficiency was issued to petitioners on May 20, 1974, for additional personal income tax due of \$3,183.00.

3. All of petitioner Harry M. Dorn's salary income of \$36,000.00 for 1971 was received from Harry M. Dorn, Inc., a New York corporation.

4. Either petitioner Harry M. Dorn or his wife, petitioner Nora Dorn, was the sole stockholder of Harry M. Dorn, Inc.; petitioner Harry M. Dorn was also its president and sole employee during 1971.

5. Harry M. Dorn, Inc. owned certain molds used for the manufacture of rubber products (e.g., the handles for battery jumper cables).

6. (a) Petitioner Harry M. Dorn solicited orders for rubber products manufactured from said molds.

(b) For the purpose of filling orders which were solicited and obtained by him, petitioner Harry M. Dorn deposited said molds with contractors located in Maryland who, pursuant to orders received from him, manufactured the products so ordered and shipped them to the customers from whom he had obtained said orders.

7. (a) During 1969 petitioners moved from New York State to Florida. During 1971 they lived in a home owned by them at 2055 Arch Creek Drive, North Miami, Florida.

(b) During 1971 petitioner Harry M. Dorn was a registered voter of Dade County, Florida.

(c) During 1971 two rooms in their aforesaid home in North Miami, Florida, were used by Harry M. Dorn as the office of Harry M. Dorn, Inc. and of another corporation called Universal Dynalac.

8. During 1971 Harry M. Dorn, Inc. had an office at 1133 Broadway, New York, New York. During said year, there were no employees at said office; in fact, the office was used solely for the purpose of storage of old molds and records.

9. All of the business of Harry M. Dorn, Inc. during 1971 was conducted and managed by petitioner Harry M. Dorn from the office in his home in North Miami, Florida.

10. During 1971 the State of Florida was the principal place of contact between Harry M. Dorn on behalf of Harry M. Dorn, Inc., and customers. The State of Florida was also the principal place of sales made by Harry M. Dorn on behalf of Harry M. Dorn, Inc.

11. Universal Dynalac is a New York corporation that owned certain molds used for the manufacture of plastic products. Neither petitioner received any salary from said corporation during 1971.

#### CONCLUSIONS OF LAW

A. That Harry M. Dorn, Inc., a New York corporation, in contemplation of law, was a close corporation by reason of the fact that petitioner Harry M. Dorn or his wife, petitioner Nora Dorn, was its sole stockholder; that petitioner Harry M. Dorn was its sole employee; that its functions were essentially passive; and that petitioner Harry M. Dorn actively conducted and managed its business.

B. That petitioners have established by a fair preponderance of the evidence that business necessity was a substantial reason for the conduct and

management of the business of Harry M. Dorn, Inc. by petitioner Harry M. Dorn from his home in Florida during 1971.

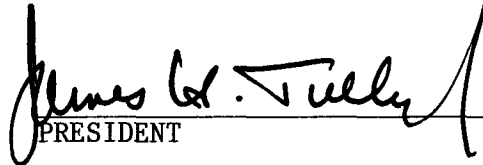
C. That the days spent by petitioner Harry M. Dorn during 1971 in his home in Florida doing work for Harry M. Dorn, Inc., are allocable to work performed outside New York State.

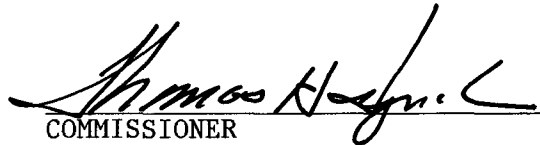
D. That the petition of Harry M. Dorn and Nora Dorn is granted and the Notice of Deficiency issued May 20, 1974 is cancelled.

DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER