

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leo & Maria Futia :
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 Years 1970-1972. :

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 11th day of January, 1980, he served the within notice of Decision by certified mail upon Leo & Maria Futia, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leo & Maria Futia
18 Interlaken Rd.
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leo & Maria Futia :
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 Years 1970-1972. _____ :

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 11th day of January, 1980, he served the within notice of Decision by certified mail upon Joseph R. Coppola 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. Joseph R. Coppola
4541 Main St.
Buffalo, NY 14226

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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 11, 1980

Leo & Maria Futia
18 Interlaken Rd.
Greenwich, CT 06830

Dear Mr. & Mrs. Futia:

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
Joseph R. Coppola
4541 Main St.
Buffalo, NY 14226
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEO FUTIA and MARIA FUTIA : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1970, 1971 and 1972. :

Petitioners, Leo and Maria Futia, 18 Interlaken 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 1970, 1971 and 1972 (File No. 14068).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One West Genesee Street, Buffalo, New York, on April 26, 1979 at 2:45 P.M. Petitioner appeared by Joseph R. Coppola, Public Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq. (Katherine Sanderson, Esq., of counsel).

ISSUE

Whether the days which petitioner, Leo Futia, worked at his home in Connecticut during 1970 through 1972 constituted days worked outside New York State for income allocation purposes.

FINDINGS OF FACT

1. Petitioners, Leo and Maria Futia, filed New York State nonresident income tax returns for 1970 through 1972. They allocated the income received by petitioner Leo Futia on the basis of the number of days he worked within and without New York State.

2. Petitioners signed consents extending the period of limitation upon assessments of personal income tax for 1970 and 1971. The consents extended

the period of limitation to April 15, 1976.

3. On January 26, 1976, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners. The Income Tax Bureau corrected the total nonworking days claimed and counted the days worked at home, during the years at issue, by the petitioner, Leo Futia, as days worked within New York State. Accordingly, the Income Tax Bureau issued a Notice of Deficiency on January 26, 1976 for \$3,778.61 personal income tax, plus \$855.70 interest, less overpayment on the 1972 Income Tax Return of \$64.19, for a total due of \$4,570.12.

4. Petitioners were residents of Greenwich, Connecticut, during the years at issue.

5. Petitioner Leo Futia was employed by the Guardian Life Insurance Company of America as Executive Vice-President, with offices located in New York, New York.

6. Petitioner Leo Futia contended that:

(a) The work performed at home in connection with his duties was required, in order to keep up with and to discharge his responsibilities.

(b) The work cannot be performed entirely at the office because of the extensiveness of petitioner's responsibilities and because he spends about 30 percent of his time travelling on business and that most of the time he spends in the office is in conference with his subordinates or senior management.

(c) The New York office building is closed on weekends and building services such as heating, air conditioning and lighting are reduced to an absolute minimum.

CONCLUSIONS OF LAW

A. That during the years at issue, days worked at home by petitioner Leo Futia were days worked there by reason of his own convenience rather than for

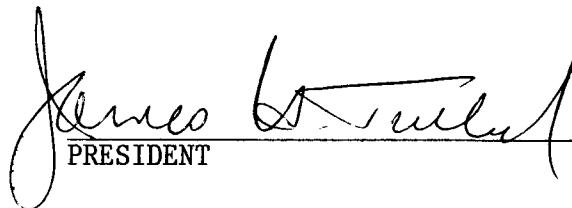
the necessity of the employer (Burke v. Bragaline, 196 NYS2d 391; Morehouse v. Murphy, 197 NYS2d 763; Speno v. Gallman 360 NYS2d 855). Therefore, said days constituted days worked within New York State for income allocation purposes within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16 (Matter of Fryman, State Tax Commission decision dated February 15, 1973; Matter of Cohen, State Tax Commission decision dated September 24, 1974; Matter of Tait, State Tax Commission decision dated February 26, 1976).

B. That the petition of Leo and Maria Futia is denied and the Notice of Deficiency issued January 26, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 11 1980


PRESIDENT


COMMISSIONER


COMMISSIONER