

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Peter & Wendy Meyer :

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 1974. :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Peter & Wendy Meyer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter & Wendy Meyer
55 Weeburn Dr.
New Canaan, CT 06840

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Peter & Wendy Meyer

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 1974.

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Martin G. Blank 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. Martin G. Blank
19 W. 44th St.
New York, NY 10036

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Peter & Wendy Meyer
55 Weeburn Dr.
New Canaan, CT 06840

Dear Mr. & Mrs. Meyer:

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
Martin G. Blank
19 W. 44th St.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER MEYER and WENDY MEYER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	

Petitioners, Peter Meyer and Wendy Meyer, 55 Weeburn Drive, New Canaan, Connecticut 06840, 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 1974 (File No. 22026).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 23, 1979 at 9:15 A.M. Petitioners appeared by Martin G. Blank, CPA. The Audit Division appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUES

I. Whether compensation received by petitioner Peter Meyer, described as payments for moving and living expenses and tax assistance, constitutes New York State taxable income.

II. Whether petitioner properly allocated his compensation to sources within and without the State of New York.

FINDINGS OF FACT

1. Petitioners, Peter Meyer and Wendy Meyer, timely filed a New York State joint income tax nonresident return for the year 1974, whereon a subtraction

of \$10,660.00 was claimed in arriving at Total New York Income. Said subtraction is comprised of two payments from petitioner Peter Meyer's employer and are described by petitioner as being for expenses incurred in moving from New York to the State of Connecticut in late 1973 and tax assistance payments paid to petitioner since his moving expenses incurred were not deductible based on the fact that the mileage requirement was not met.

2. On July 14, 1977, the Audit Division issued a Statement of Audit Changes, wherein the aforementioned subtraction was disallowed. Furthermore, an adjustment was made to petitioner's claimed allocation of his total compensation (including amount of subtraction) derived from his New York employer, International Business Machines Corporation (IBM). Said adjustment, in effect, increased petitioner's income allocable to New York State since six days claimed as having been worked without New York were disallowed and, an additional ten days which were worked at petitioner's Connecticut home were also disallowed. These adjustments were based on petitioners previously submitted schedule. Additionally, two days, July 8th and 9th, were deducted from nonworking days since petitioner also claimed said days as days worked outside New York. Accordingly, a Notice of Deficiency was issued on February 27, 1978 asserting additional personal income tax of \$1,579.73, plus interest of \$385.53, for a total due of \$1,965.26.

3. Although petitioner claimed \$10,660.00 as the amount of other compensation, a statement from his employer indicates that the actual amount was \$10,543.67, comprised of moving and living expenses of \$5,010.03 and tax assistance of \$5,533.64, both of which he contends were included in his Wage and Tax Statement as wages paid.

4. Petitioners contended that these payments are not taxable for New York State purposes since they were nonresidents at the time payment was made.

5. Subsequent to his move to Connecticut, petitioner continued his employment with IBM in New York State.

6. Petitioner contended that he worked without New York State a total of thirty-nine days during 1974, but he offered no documentation to substantiate that he worked without the State more than the twenty-three as allowed by the Audit Division. No documentation was submitted to verify the total number of nonworking days.

7. Petitioner contended that the days worked at home in New Canaan, Connecticut were authorized by the employer and were necessary to eliminate travel and meal time when working towards a deadline. These days were spent at meetings and preparing reports and speeches.

CONCLUSIONS OF LAW

A. That the New York adjusted gross income of a nonresident individual includes items of income, gain, loss and deduction entering into his Federal adjusted gross income which are attributable to a business, trade, profession or occupation carried on in this State (20 NYCRR 131.4). Accordingly, the income received by petitioner Peter Meyer from IBM, described as being for moving and living expenses and tax assistance, is taxable for New York State purposes, and is not a proper subtraction in computing Total New York Income.

B. That petitioner has not sustained his burden of proof required under section 689(e) of the Tax Law to show that he worked more than twenty-three days outside New York and that the number of nonworking days during said year is more than the one hundred thirty-two allowed by the Audit Division.

C. That any allowance claimed for days worked outside of the State must be based upon the performance of services which of necessity - as distinguished from convenience - obligate the employee to out-of-state duties in the service

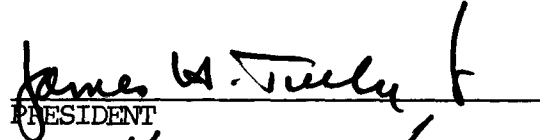
of his employer (20 NYCRR 131.16). Since petitioner was not required to prepare his speeches and reports at a location outside the State of New York, such days are not allocable as days worked without the State.

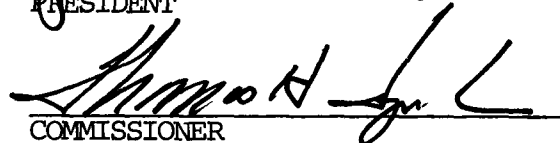
D. That the petition of Peter Meyer and Wendy Meyer is denied and the Notice of Deficiency dated February 27, 1978 is sustained, together with such additional interest which is lawfully owing.

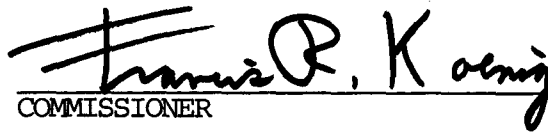
DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER