

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Henry M. & Anna H. Watts, Jr. :

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 1973. :

State of New York
County of Albany

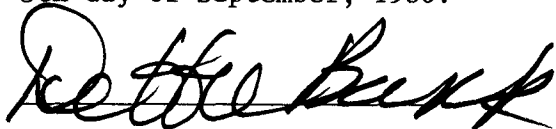
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of September, 1980, he served the within notice of Decision by certified mail upon Henry M. & Anna H. Watts, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

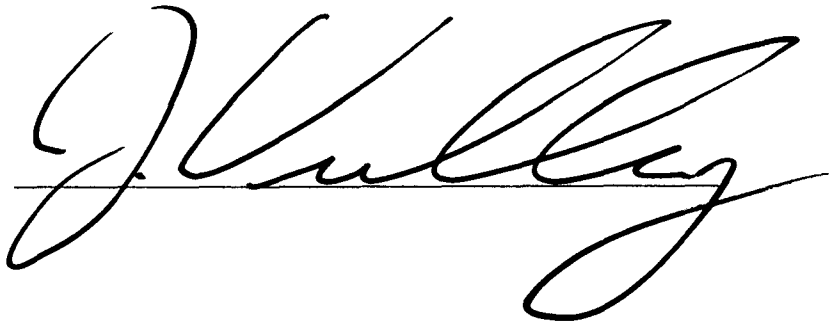
Henry M. & Anna H. Watts, Jr.
219 Spruce St.
Philadelphia, PA 19106

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
5th day of September, 1980.





STATE OF NEW YORK
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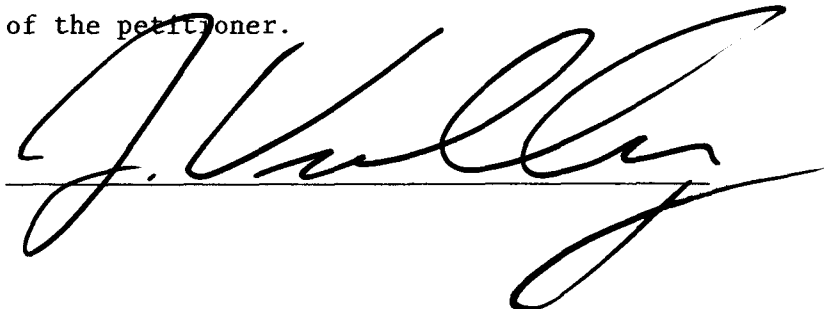
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of September, 1980, he served the within notice of Decision by certified mail upon Charles A. Wills the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Charles A. Wills
Mitchel, Schreiber, Watts & Co., Inc.
20 Broad St.
New York, NY 10005

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
5th day of September, 1980.



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

September 5, 1980

Henry M. & Anna H. Watts, Jr.
219 Spruce St.
Philadelphia, PA 19106

Dear Mr. & Mrs. Watts:

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
Charles A. Wills
Mitchel, Schreiber, Watts & Co., Inc.
20 Broad St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HENRY M. WATTS, JR.	:	DECISION
and	:	
ANNA H. WATTS	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1973.	:	

Petitioners, Henry M. Watts, Jr. and Anna H. Watts, 219 Spruce Street, Philadelphia, Pennsylvania 19106, 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 1973 (File No. 18838).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 29, 1979 at 2:45 P.M. Petitioners appeared by Charles A. Wills. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner Henry M. Watts, Jr. properly allocated his salary income for the year 1973, based on the number of days worked within and without the State of New York.

FINDINGS OF FACT

1. Petitioners, Henry M. Watts, Jr. and Anna H. Watts, timely filed a joint New York State Income Tax Nonresident Return for the year 1973, on which salary income of \$46,342.00 was allocated based on the number of days worked within and without New York State. Accordingly, a ratio of 166/226 was

reported and applied to the aforementioned salary income. When questioned by the Audit Division, petitioners submitted a revised allocation schedule, claiming 137 days worked in New York out of 203 working days.

2. On April 11, 1977, the Audit Division issued a Notice of Deficiency in the sum of \$1,304.55 plus interest for the year 1973, along with an explanatory Statement of Audit Changes, on which various items reported on petitioners' tax return were adjusted and/or corrected in accordance with information submitted by petitioners. The sole adjustment challenged by petitioners, and at issue, was the disallowance of 65 days reported to have been worked without New York State. The Audit Division determined that these 65 days were worked on behalf of various other organizations, and not for petitioner's employer.

3. Petitioner Henry M. Watts, Jr. was president and chairman of the board for Mitchel, Schreiber, Watts and Co., Inc. (the firm), a securities brokerage firm located in the City and State of New York. His activities on behalf of the firm were primarily as its chief administration officer. In addition, petitioner donated his time and effort to various charitable organizations.

4. The charitable organizations to whom petitioner donated his time, invested its donated funds by utilizing the firm's facilities to execute their orders. Accordingly, petitioner's position was that he should be allowed to count his donated time as days worked without New York State, since the firm generated income from the execution of these orders, which the firm received as a result of his charitable activities rendered without New York State.

5. The charitable organizations did not compensate petitioner Henry M. Watts, Jr. for the time and effort rendered by him during the year at issue. In addition, no written or oral agreement existed, which obligated the charit-

able organizations to execute their orders through the firm. Petitioner's salary income was not determinable, or affected by the amount of income the firm realized from the execution of these orders.

CONCLUSIONS OF LAW

A. That any allowance claimed for days worked outside New York State must be attributable to days worked in the performance of services, which of necessity obligate the employee to out-of-state duties in the service of his employer (20 NYCRR 131.16).

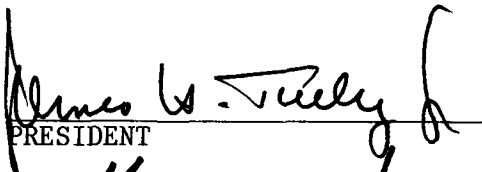
B. That the salary income received by petitioner Henry M. Watts, Jr. during the year 1973 constituted compensation for services rendered as president and chairman of the board of Mitchel, Schreiber, Watts, and Co., Inc., and were not for services admittedly donated to various charitable organizations. Accordingly, the 65 days at issue worked without compensation, are deemed to be nonworking days in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

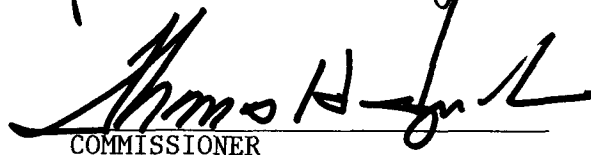
C. That the petition of Henry M. Watts, Jr. and Anna H. Watts is denied and the Notice of Deficiency issued April 11, 1977 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER