

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frank Wayne :
and Frank Louise Wayne : 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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Frank Wayne, and Frank Louise Wayne, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank Wayne
and Frank Louise Wayne
622 N. Canon Dr.
Beverly Hills, CA 90210

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
20th day of June, 1980.

Joanne Krapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frank Wayne :
and Frank Louise Wayne : 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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Norman D. Andron the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

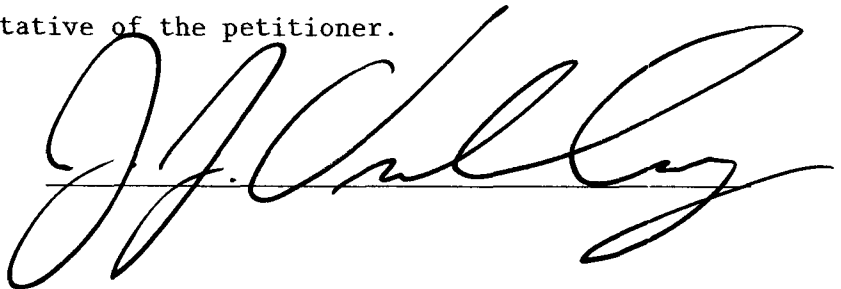
Mr. Norman D. Andron
18 East 41st St.
New York, NY 10017

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
20th day of June, 1980.

Joanne Knapp



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

June 20, 1980

Frank Wayne
and Frank Louise Wayne
622 N. Canon Dr.
Beverly Hills, CA 90210

Dear Mr. & Mrs. Wayne:

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
Norman D. Andron
18 East 41st St.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK WAYNE and FRANK LOUISE WAYNE	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

Petitioners, Frank Wayne and Frank Louise Wayne, 622 North Canon Drive, Beverly Hills, California 90210, 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 1970 (File No. 13857).

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 November 29, 1979 at 10:45 A.M. Petitioners appeared by Norman D. Andron. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether days worked at petitioners' home in New Jersey constituted days worked without New York State for the purpose of allocating petitioner Frank Wayne's wage income to sources within and without New York State.

FINDINGS OF FACT

1. Petitioners, Frank Wayne and Frank Louise Wayne, timely filed a joint New York State Income Tax Nonresident Return for the year 1970 whereon petitioner Frank Wayne allocated his wages from his New York employer, Goodson-Todman Associates, Inc., on a days worked within and without New York State basis.

2. A consent extending the period of limitations for 1970 until April 15, 1975 was executed in accordance with section 683(c) (2) of the Tax Law. On April 12, 1972, the Income Tax Bureau issued a Statement of Audit Changes to petitioners whereon seventy-five (75) days that petitioner Frank Wayne worked at his New Jersey residence were disallowed as days worked without New York State. Accordingly, a Notice of Deficiency was issued against petitioners on September 30, 1974, asserting additional personal income tax of \$2,868.89, plus interest of \$595.18, for a total due of \$3,464.07.

3. Frank Wayne (hereinafter petitioner) contended that it was necessary for him to work at home since his employer did not provide space in New York for him to carry out his required duties.

4. For many years prior to, and during the year at issue, petitioner was employed by Goodson-Todman Associates, Inc., assigned to their New York office as the executive producer and sole stunt creator of the television show, "Beat the Clock".

5. Petitioner was required to present the show with a sufficient supply of stunts guaranteed to work properly. The stunts, which had to be tested concepts rather than theoretical stunts, were constructed and tested at petitioner's workshop, which was located in his personal residence.

6. Goodson-Todman Associates, Inc. furnished petitioner with an office, which was approximately 11' by 12', at its administrative offices located at 375 Park Avenue, New York City. Petitioner contended that he could not use his New York office for the purpose of constructing and testing stunts due to size and noise restrictions.

7. During taxable year 1970, the shows were taped at independent studios which had no association with Goodson-Todman Associates, Inc. From January 1 through June 22, the shows were taped in a New York studio. From

June 23 through the close of the taxable year at issue, the shows were taped in a studio located in Montreal, Canada. Petitioner contended that forty-six (46) of the seventy-five (75) days worked at home were in preparation for the shows which were taped in Montreal and, as such, the income derived during these forty-six (46) days was not derived from or connected with New York sources.

8. Goodson-Todman Associates, Inc. did not maintain an office in Montreal, Canada.

CONCLUSIONS OF LAW

A. 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 the petitioner herein was not obligated out of the necessity of his New York employer to perform his stunt construction and testing duties out-of-state, but rather did so at his New Jersey residence for his own convenience, the days which the petitioner worked at home do not constitute days worked without 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.

B. That the petition of Frank Wayne and Frank Louise Wayne is denied and the Notice of Deficiency dated September 30, 1974 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER