

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Hunter & Gertrude Yager :

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 Years 1970 & 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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Hunter & Gertrude Yager, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hunter & Gertrude Yager
19 Sylvan Rd.
Darien, CT 06820

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
17th day of October, 1980.

Deborah A Bank

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
HUNTER YAGER and GERTRUDE YAGER	:	DECISION
	:	
for Redetermination of Deficiencies or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1970 and 1973.	:	

Petitioners, Hunter Yager and Gertrude Yager, 19 Sylvan Road, Darien, Connecticut 06820, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1970 and 1973 (File Nos. 14325 and 17986).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 2, 1978 at 1:40 P.M. Petitioners appeared by Hirsch Kaplan, CPA. The Audit Division appeared by Peter Crotty, Esq. (Bruce M. Zalaman, Esq., of counsel).

ISSUE

Whether petitioner Hunter Yager may attribute a portion of his 1970 and 1973 income to a non-New York source under section 632 of the Tax Law, because his services performed at his Connecticut home outside of his employer's normal business hours were performed there out of necessity, as distinguished from convenience, within the meaning of 20 NYCRR 131.16.

FINDINGS OF FACT

1. Petitioners, Hunter Yager and Gertrude Yager, residents of Connecticut, filed a New York State income tax nonresident return for the years at issue. For 1970 petitioners allocated Hunter Yager's salary income to New York by a fraction, the numerator of which was the number of days claimed to have been

worked in New York State ($197\frac{1}{2}$), and the denominator of which was the number of days claimed to have been worked during the year (268). For 1973 petitioners allocated income in the same manner but claimed 186 days worked in New York State out of a total of 270 days worked.

2. On July 9, 1971, the Audit Division issued a Statement of Audit Changes to petitioners revising petitioners' computation of New York income for 1973 on the grounds that time spent at a taxpayer's home is not a proper basis for allocation of salary income to outside the State. On February 26, 1973, the Audit Division issued a Notice of Deficiency for said year in the amount of \$633.60 in tax, plus interest of \$63.12, less an overpayment of \$69.00.

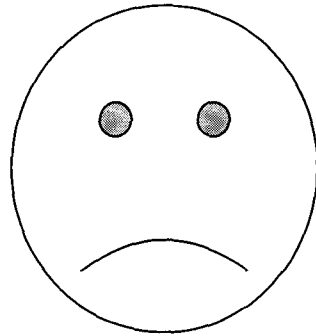
3. On January 24, 1977, the Audit Division issued a Notice of Deficiency and explanatory Statement of Audit Changes asserting a tax due of \$1,086.25, plus interest of \$226.32 for 1973. The Deficiency was issued on the grounds that time spent at a taxpayer's home is not a proper basis of allocation of salary income to outside the State.

4. During the years herein involved, petitioner Hunter Yager was employed by Grey Advertising Agency, Inc. ("Grey") as a corporate executive. Throughout the years, Grey's offices were located in New York City.

5. During the years herein involved, Mr. Yager's workload was such that he was forced on occasion to work beyond Grey's normal business hours. This work outside of normal business hours was performed by said petitioner at his Darien, Connecticut, home.

6. Mr. Yager could not conveniently perform such non-business hours activities at Grey's New York offices during the periods involved, as those offices were neither adequately heated nor air-conditioned during non-business hours.

CORRECTION FOLLOWS



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STATE TAX COMMISSION

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Hunter & Gertrude Yager
19 Sylvan Rd.
Darien, CT 06820

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Sworn to before me this
17th day of October, 1980.

Dorothy A. Bank

J. Vredenburg

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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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Hirsch Kaplen the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

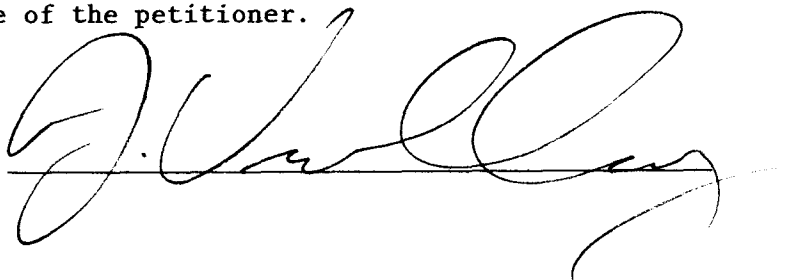
Mr. Hirsch Kaplen
521 Fifth Ave.
New York, NY 10017

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
17th day of October, 1980.

Dorothy A. Bank



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

October 17, 1980

Hunter & Gertrude Yager
19 Sylvan Rd.
Darien, CT 06820

Dear Mr. & Mrs. Yager:

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
Hirsch Kaplen
521 Fifth Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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HUNTER YAGER and GERTRUDE YAGER	:	DECISION
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A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 2, 1978 at 1:40 P.M. Petitioners appeared by Hirsch Kaplan, CPA. The Audit Division appeared by Peter Crotty, Esq. (Bruce M. Zalaman, Esq., of counsel).

ISSUE

Whether petitioner Hunter Yager may attribute a portion of his 1970 and 1973 income to a non-New York source under section 632 of the Tax Law, because his services performed at his Connecticut home outside of his employer's normal business hours were performed there out of necessity, as distinguished from convenience, within the meaning of 20 NYCRR 131.16.

FINDINGS OF FACT

1. Petitioners, Hunter Yager and Gertrude Yager, residents of Connecticut, filed a New York State income tax nonresident return for the years at issue. For 1970 petitioners allocated Hunter Yager's salary income to New York by a fraction, the numerator of which was the number of days claimed to have been

worked in New York State (197 $\frac{1}{2}$), and the denominator of which was the number of days claimed to have been worked during the year (268). For 1973 petitioners allocated income in the same manner but claimed 186 days worked in New York State out of a total of 270 days worked.

2. On July 9, 1971, the Audit Division issued a Statement of Audit Changes to petitioners revising petitioners' computation of New York income for 1973 on the grounds that time spent at a taxpayer's home is not a proper basis for allocation of salary income to outside the State. On February 26, 1973, the Audit Division issued a Notice of Deficiency for said year in the amount of \$633.60 in tax, plus interest of \$63.12, less an overpayment of \$69.00.

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4. During the years herein involved, petitioner Hunter Yager was employed by Grey Advertising Agency, Inc. ("Grey") as a corporate executive. Throughout the years, Grey's offices were located in New York City.

5. During the years herein involved, Mr. Yager's workload was such that he was forced on occasion to work beyond Grey's normal business hours. This work outside of normal business hours was performed by said petitioner at his Darien, Connecticut, home.

6. Mr. Yager could not conveniently perform such non-business hours activities at Grey's New York offices during the periods involved, as those offices were neither adequately heated nor air-conditioned during non-business hours.

7. Mr. Yager received his only compensation from Grey, during the years herein involved, in the form of salary. This salary took no account of said petitioner's work for his employer outside of normal business hours.

8. Mr. Yager has failed to establish that residing outside New York State was a condition of his employment with Grey.

9. Petitioners have failed to establish that the work performed by Mr. Yager at his Darien, Connecticut, home could not have been performed within New York State.

10. Petitioners have failed to establish that the work performed at Darien, Connecticut, was required by Grey to be performed outside New York State.

11. Findings of Fact "8", "9" and "10", taken together, establish that petitioner performed his overtime activities outside New York State at his Darien, Connecticut, home during the period herein involved for his own convenience and not that of his employer, Grey.

CONCLUSIONS OF LAW

A. That the services performed outside New York State by petitioner Hunter Yager, at his home, for his employer in 1970 and 1973 were so performed solely for his own convenience, within the meaning of 20 NYCRR 131.16 and not out of any requirement or intrinsic necessity of his employment obligating him to do so.

B. That petitioner Hunter Yager may not, under section 632 of the Tax Law, attribute any portion of his compensation from Grey for 1970 and 1973 to a non-New York source.

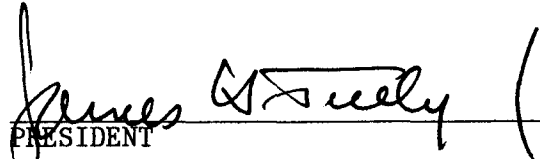
C. That the petition of Hunter Yager and Gertrude Yager is denied and

the notices of deficiency issued February 26, 1973 and January 24, 1977 are sustained.

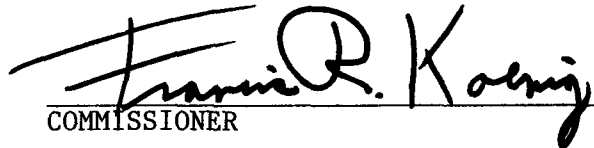
DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

REQUEST FOR BETTER ADDRESS14325-179866
42

For Dec. (22) 10-17

Requested by <i>J. Wedenlang</i>	Unit Tax Appeals Bureau Room 107 - Bldg. 49 State Campus Albany, New York 12227	Date of Request
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>052-24-0167</i>	Date of Petition <i>79-07-09</i>
Name <i>Hunter & Gertrude Yager</i>	
Address <i>19- Sylvan Rd. Darien, CT 06820</i>	

Results of search by Files

<input type="checkbox"/> New address:	<i>2nd 517 W. Lynn Farm Dr Greenwich, Ct. 06830</i>
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

SY

Hunter & Gertrude Yager
19 Sylvan Rd.
Darien, CT 06820

remitted
11/7/80

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AFFIDAVIT OF MAILING

State of New York
County of Albany

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Hunter & Gertrude Yager
517 W. Lyon Farm Dr.
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
14th day of November, 1980.

Deborah A Bank

J Vredenburg