

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George R. & Lorraine A. Boller :
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 :
1968 - 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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon George R. & Lorraine A. Boller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George R. & Lorraine A. Boller
61 Andrews Dr.
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
2nd day of October, 1981.

Cornelia P. Hage

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
George R. & Lorraine A. Boller :
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 :
1968 - 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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Sidney W. Azriliant the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sidney W. Azriliant
Oppenheim & Azriliant
36 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
2nd day of October, 1981.

Connie A. Hagelund

J. Vredenburg

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

October 2, 1981

George R. & Lorraine A. Boller
61 Andrews Dr.
Darien, CT 06820

Dear Mr. & Mrs. Boller:

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,
Kathy Pfrffenbach

STATE TAX COMMISSION

cc: Petitioner's Representative
Sidney W. Azriliant
Oppenheim & Azriliant
36 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 :
GEORGE R. BOLLER and LORRAINE A. BOLLER : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1968, 1969 and 1970. :

Petitioners, George R. Boller and Lorraine A. Boller, 61 Andrews Drive, Darien, Connecticut 06820, 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 1968, 1969 and 1970 (File No. 14211).

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 June 21, 1977 at 2:15 P.M. Petitioner appeared by Oppenheim & Azriliant, P.C. (Sidney W. Azriliant, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUES

I. Whether days worked by petitioner, George R. Boller, at his home in Connecticut are considered days worked outside the State for purposes of computing income derived from New York sources.

II. Whether petitioner George R. Boller, who described himself as an "independent consultant" for the period July 1, 1970 through December 31, 1970, was in fact an independent contractor and not an employee.

FINDINGS OF FACT

1. That petitioners, George R. Boller and Lorraine A. Boller, filed New York State Income Tax Nonresident Returns for the years 1968 through 1970 on which they allocated income within and without New York State.

2. On March 20, 1972, the Income Tax Bureau issued a Notice of Deficiency against petitioners together with a Statement of Audit Changes in the amount of \$762.24 in tax for 1968, \$1,471.85 in tax for 1969 and \$4,724.48 in tax for 1970 and added the appropriate interest. The adjustment was based a) on disallowance of days worked at Mr. Boller's Connecticut home as days worked outside New York State for income allocation purposes; and b) on the basis that since petitioners did not furnish all requested information, all of the reputed wages of \$89,999.96 for 1970 were considered to have been received by Mr. Boller on or before the date of his resignation, June 30, 1970.

3. Petitioners were nondomiciliaries and nonresidents of the State of New York, residing exclusively in Darien, Connecticut, during the years 1968 through 1970.

4. Petitioner George R. Boller was employed by SCM Corporation ("SCM") continuously throughout the years herein involved. From January 1, 1968 to June 30, 1970, Mr. Boller served as chairman of the Acquisition and Merger Committee of SCM. During the same period, he served as chairman of the board controlling SCM's international operations. Mr. Boller held the title of "vice-president in charge of corporate development" until his resignation which became effective on June 30, 1970. From July 1, 1970 to December 31, 1970, Mr. Boller carried on substantially similar duties for SCM under the title of consultant.

5. Throughout the years at issue, Mr. Boller's SCM services were performed pursuant to oral agreements between the parties.

6. Petitioner George R. Boller was engaged in expanding SCM's international volume of trade throughout said period. He was also actively involved in locating potential merger and acquisition candidates for SCM during that period. He conducted negotiations necessary for the successful completion of his SCM duties.

7. Mr. Boller's activities for SCM required him to arrange for the private entertainment of senior executive business associates. He usually arranged for this entertainment to take place at his country home in Connecticut.

8. From January 1, 1968 to June 30, 1970, Mr. Boller's business meetings and negotiation sessions were for the most part carried on outside of SCM's New York City headquarters, at petitioners' Connecticut home. This was done in an effort to assure the participants a relaxed and confidential atmosphere. The need for confidentiality was made more acute by a series of damaging business leaks emanating from the New York City headquarters, which just prior to the period herein involved had disrupted SCM's operations.

9. According to the custom of the industry, Mr. Boller's employer, SCM, had arranged some business meetings and other corporate functions in private hotel suites rented within the State of New York. A calm, confidential atmosphere was obtained under such circumstances.

10. Petitioner George R. Boller gave up his offices at SCM headquarters in New York City on June 30, 1970. From July 1, 1970 through December 31, 1970, he worked out of his Connecticut home. During this period, Mr. Boller was involved in the initial preliminary stages of a number of projects for SCM and other engagers. In 1970, Mr. Boller received no compensation for services rendered to engagers other than SCM.

11. There is no evidence that petitioner George R. Boller was either required or directed by SCM to use an out-of-state location for entertainment

and business activities during the period herein involved. He has shown that when negotiations were conducted at his Connecticut home, their progress was under the direction of SCM's board chairman.

12. During the years 1968 through 1970, Mr. Boller's oral employment agreement did not by its terms require him to use his out-of-state residence or any other out-of-state location for SCM related activities.

13. Petitioner George R. Boller testified that the only compensation which he received during the period July 1, 1970 through December 31, 1970 was approximately \$40,333.33 paid to him by SCM. No documentation was submitted in support of this amount.

14. Mr. Boller's SCM compensation during the period July 1, 1970 through December 31, 1970 was recorded on a W-2 form. He was not paid subject to a Form 1099 as an independent consultant.

15. Petitioners retained their coverage under SCM's employee health plan from July 1, 1970 through December 31, 1970, and received benefits under that coverage.

16. Findings of Fact 7 through 12 establish that petitioner George R. Boller used his Connecticut home to perform SCM activities for his own convenience and not by requirement of SCM. Findings of Fact 7 through 12 also show that his SCM-related activities could have been performed within the State of New York.

17. Findings of Fact 4, 6, 10, 13, 14 and 15 show that for the period July 1, 1970 through December 31, 1970, Mr. Boller (regardless of title) functioned as an employee of SCM and not as an independent consultant. He performed the same duties for SCM throughout 1970.

18. No greater deficiency was asserted by the Audit Division.

CONCLUSIONS OF LAW

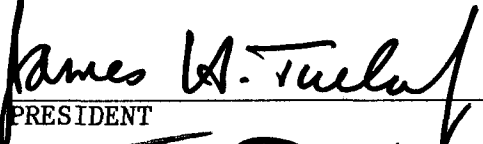
A. That petitioner George R. Boller was an employee of SCM throughout the entire year 1970 (Finding of Fact "17" supra).

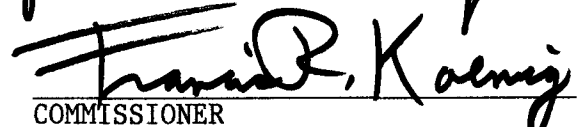
B. That petitioner George R. Boller, a nonresident nondomiciliary of the State of New York, held business discussions and entertained business associates for his employer at his Connecticut home during the years 1968 through 1970 for his own convenience, within the meaning and intent of 20 NYCRR 131.16; therefore, he is liable for personal income tax on income attributable to the days he was so involved. See Matter of Speno v. Gallman, 35 N.Y.2d 256.

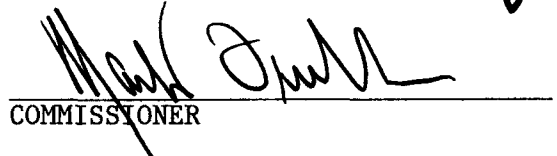
C. That the part-year allocation used by the Audit Division for 1970 is in error. However, since a greater deficiency based on a full year's employment was not asserted for 1970, the Notice of Deficiency issued on March 20, 1972 is sustained, together with such interest as lawfully due.

DATED: Albany, New York
OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER