

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gene & Gwen Bylinsky :

: 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 3rd day of July, 1981, he served the within notice of Decision by certified mail upon Gene & Gwen Bylinsky, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gene & Gwen Bylinsky
32 Chapel La.
Riverside, CT 06878

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
3rd day of July, 1981.

Constance P. Hagelund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gene & Gwen Bylinsky :

: 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 3rd day of July, 1981, he served the within notice of Decision by certified mail upon Richard E. Halperin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard E. Halperin
Shea, Gould, Climenko & Casey
330 Madison 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
3rd day of July, 1981.

Constance R. Haglund

J. Vredenburg

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

July 3, 1981

Gene & Gwen Bylinsky
32 Chapel La.
Riverside, CT 06878

Dear Mr. & Mrs. Bylinsky:

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
Richard E. Halperin
Shea, Gould, Climenko & Casey
330 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GENE BYLINSKY AND GWEN BYLINSKY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund if Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioners, Gene Bylinsky and Gwen Bylinsky, 32 Chapel Lane, Riverside, Connecticut 06818, 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. 20931).

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 January 29, 1981 at 2:45 P.M. Petitioner Gene Bylinsky appeared with Richard E. Halperin, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether days worked at home by petitioner Gene Bylinsky properly constituted days worked outside New York for the purpose of allocating his salary income to sources within and without New York State.

FINDINGS OF FACT

1. Petitioners, Gene Bylinsky and Gwen Bylinsky, timely filed a New York State Income Tax Nonresident Return for the year 1974 whereon Gene Bylinsky (hereinafter petitioner) reported an allocation of his salary income derived from Time Incorporated, a New York State corporation. Based on such allocation,

petitioner reported 176 days worked without New York State and 51 days worked within.

2. On January 24, 1977 the Audit Division issued a Statement of Audit changes wherein, based on an analysis of a comprehensive schedule submitted by petitioner, detailing his daily whereabouts and activities during 1974, his claimed allocation was adjusted to allow 60 days worked without New York State and 175 days worked within. Said adjustment was basically the result of the disallowance of days worked at home from the total claimed as days worked outside New York State. Accordingly, a Notice of Deficiency was issued against petitioners on September 26, 1977 asserting additional personal income tax of \$980.15, plus interest of \$204.06, for a total due of \$1,184.21.

3. During 1974 petitioner's activities consisted of writing science and technology articles for his employer, Fortune Magazine (Fortune), a division of Time Incorporated. Additionally, he derived \$1,709.00 from free-lance writing during a five week vacation from Fortune.

4. Petitioners activities with respect to Fortune consisted primarily of interviewing persons in connection with writing articles, doing research, and writing the articles. Petitioner contended that all said activities were conducted outside New York State.

5. During the hearing held herein petitioner, although given the opportunity, did not argue the merits of his initial position, which was that the days he spent working at his Connecticut home constituted days worked without New York State, but rather he argued that all his personal services rendered for Fortune were done so wholly without New York, and as such, no income derived from said employer is allocable to New York State.

6. The hearing record contains several facts which are contradictory to petitioner's claim that all services were rendered for Fortune without New York State as follows:

a. Petitioner reported on his return 51 days worked in New York for Fortune

b. Petitioner's allocation schedule received by the Audit Division on November 12, 1976 lists 52 days worked in New York.

c. Petitioner testified that after writing, "the article is brought in or even sent in, "and additionally testified that he" may come into New York to pick up lists of suggestions".

d. Per petitioner's letter dated October 25, 1976 he stated that the Fortune writer "does spend a week or ten days in the New York office when the story is being "closed", or prepared for publication. Then another reporting-writing cycle begins."

CONCLUSIONS OF LAW

A. That the record clearly establishes that petitioner did render services in New York State during several days in taxable year 1974 in the employ of Fortune Magazine. Accordingly, an allocation of his salary to sources within and without New York State must properly be computed pursuant to 20 NYCRR 131.16.

B. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that the days worked at his home were done so by reason of his employer's necessity rather than his own convenience.

C. That the petition of Gene Bylinsky and Gwen Bylinsky is denied and the Notice of Deficiency dated September 26, 1977 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUL 03 1981

STATE TAX COMMISSION

James G. Tully

PRESIDENT

Thomas D. Lyn.

COMMISSIONER

Francis R. Koenig

COMMISSIONER