

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard J. Goggin :
and Margaret D. Goggin :
: 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
1974 & 1975.

State of New York
County of Albany

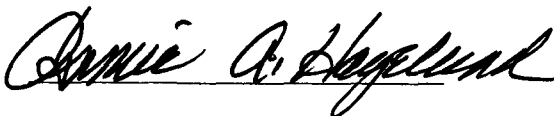
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of November, 1981, he served the within notice of Decision by certified mail upon Richard J. Goggin, and Margaret D. Goggin the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

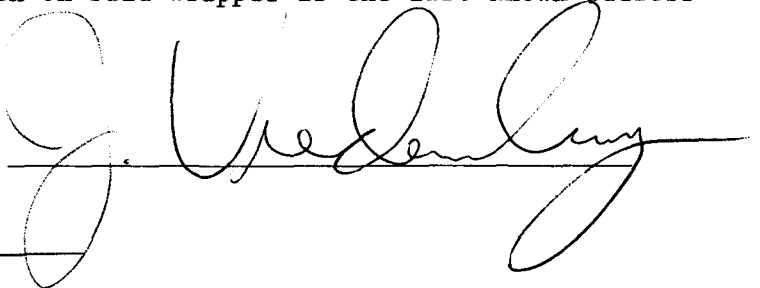
Richard J. Goggin
and Margaret D. Goggin
Plumtrees Rd.
Newtown, CT 06470

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
27th day of November, 1981.





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

November 27, 1981

Richard J. Goggin
and Margaret D. Goggin
Plumtrees Rd.
Newtown, CT 06470

Dear Mr. & Mrs. Goggin:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RICHARD J. GOGGIN and MARGARET D. GOGGIN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1974 and 1975.	:	

Petitioners, Richard J. Goggin and Margaret D. Goggin, R.D. #1, Plumtrees Road, Newtown, Connecticut 06470 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 1974 and 1975 (File No. 23032).

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 June 19, 1981 at 10:45 A.M. Petitioner Richard J. Goggin appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether days worked at petitioner's home in Connecticut constituted days worked without New York State for the purpose of allocating petitioner Richard J. Goggin's salary income to sources within and without New York State.

FINDINGS OF FACT

1. Petitioners, Richard J. Goggin and Margaret D. Goggin, timely filed joint New York State income tax nonresident returns for the years 1974 and 1975 whereon Richard J. Goggin (hereinafter petitioner) each year claimed an allocation of his salary income to sources within and without New York State.

2. On February 15, 1978 the Audit Division issued a Statement of Audit Changes to petitioners wherein adjustments were made for said years disallowing petitioner's total days claimed as having been worked outside New York State, since such days were worked at his Connecticut residence. Accordingly, a Notice of Deficiency was issued against petitioners on April 4, 1978 asserting additional personal income tax of \$1,183.40, plus interest of \$244.16, for a total due of \$1,427.56.

3. During the years at issue petitioner was a full time professor at New York University, School of the Arts. He was assigned to the Department of Film and Television and taught courses relating to broadcasting and mass communications.

4. Petitioner maintained an extensive, specialized library at his Connecticut residence. Such library contained books, magazines, newspaper clippings, reports, research studies and various other materials relative to the courses he taught. Said library, which was built over a period of several decades and contained materials not generally available at the New York University Library or elsewhere, was used by petitioner for research, preparation for classes and composing and grading examinations.

5. Petitioner was furnished with an office by New York University but such office was inadequate for the type of work which he performed at his residence since it was shared with another individual and lacked privacy, security and full accessibility.

CONCLUSIONS OF LAW

A. That with respect to the earnings of nonresident employees and officers, 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).

B. That the services performed by petitioner at his Connecticut residence were so performed at said location out of petitioner's own necessity and convenience and not by reason of his employer's necessity which obligated him to out-of-state duties. Accordingly, those days worked by petitioner at his Connecticut residence must be held to be days worked within New York State within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16 (Matter of Richard J. Goggin and Margaret D. Goggin, N.Y.S. Tax Commission Decision, January 16, 1973.)

C. That the petition of Richard J. Goggin and Margaret D. Goggin is denied and the Notice of Deficiency dated April 4, 1978 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER