

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Salvador G. Mandine :
and Carmen A. Mandine :
: 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 :
1971 & 1972.

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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Salvador G. Mandine and Carmen A. Mandine the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Salvador G. Mandine
and Carmen A. Mandine
59 DuBois St.
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
19th day of June, 1981.

Cornelia R. Hayward

J. Vredenburg

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

June 19, 1981

Salvador G. Mandine
and Carmen A. Mandine
59 DuBois St.
Darien, CT 06820

Dear Mr. & Mrs. Mandine:

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	:	
	:	
SALVADOR G. MANDINE and CARMEN A. MANDINE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1971 and 1972.	:	

Petitioners, Salvador G. Mandine and Carmen A. Mandine, 59 DuBois Street, 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 1971 and 1972 (File No. 22617).

On October 25, 1978, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUE

Whether petitioner Salvador G. Mandine is properly entitled to allocate his wage income to sources within and without New York State.

FINDINGS OF FACT

1. On June 27, 1975, Salvador G. Mandine and Carmen A. Mandine (hereinafter petitioners) filed amended New York State income tax nonresident returns for the years 1971 and 1972, whereon refunds were claimed of \$167.11 and \$597.19, respectively.

2. The revision per amended returns was comprised of an allocation of wages to sources within and without New York State claimed for each of the years at issue. Said allocations were computed on petitioner Salvador G.

Mandine's wage income derived from General Reinsurance Corp., 400 Park Avenue, New York City.

3. Petitioner claimed 135 days worked outside New York State for taxable year 1971. For 1972, 124 days were claimed as having been worked outside New York State. The number of days worked outside New York State consisted entirely of Saturdays, Sundays, holidays, vacations and sickdays.

4. On June 28, 1976, the Audit Division issued a formal notice of disallowance whereon petitioner's claims for refund per amended returns were disallowed in full.

5. Petitioner made no claim that services were actively rendered by him during the days claimed as having been worked outside New York State, but rather contended that such days are properly considered days worked outside New York State since he was an executive who was paid for every day of the year whether or not he actually went to the office in New York City. He argued that he received his full salary without regard to the number of days worked and was obligated, if the need arose, to report to the office on Saturdays, Sundays and other usual non-working days at no extra compensation.

CONCLUSIONS OF LAW

A. That NYCRR 131.16 provides, in pertinent part, 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. In making the allocation provided for in this section, no account is taken of non-working days, including Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation, or leave without pay.

That since no evidence was submitted to show that any days were actually worked by petitioner without New York State, and allocation of income is not properly

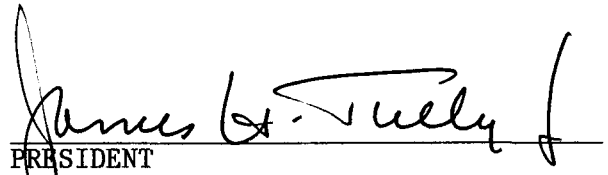
allowable. Accordingly, petitioner's full wage derived from General Reinsurance Corp. is taxable for New York State income tax purposes.

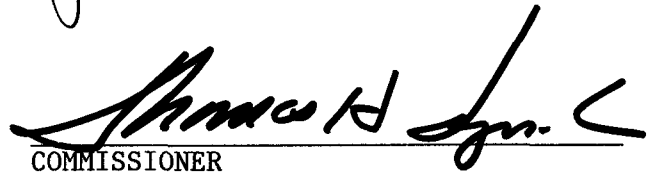
B. That the petition of Salvador G. Mandine and Carmen A. Mandine is denied and the notice of disallowance of petitioner's claimed refunds dated June 28, 1976 is hereby sustained.

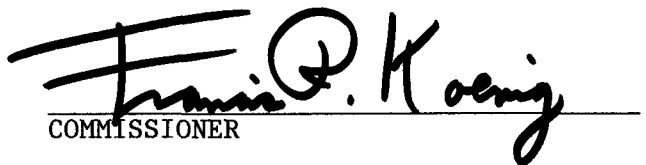
DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1981


PRESIDENT


COMMISSIONER


COMMISSIONER