

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Charles G. Mortimer, Jr. :
: 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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Charles G. Mortimer, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles G. Mortimer, Jr.
49 West La.
Madison, NJ 07940

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 August, 1981.

Annie A. Hageland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Charles G. Mortimer, Jr. :
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for Redetermination of a Deficiency or a Revision :
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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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Kenneth M. Katz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kenneth M. Katz
Berger & Katz
26-20 Bell Blvd.
Bayside, NY 11360

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
14th day of August, 1981.

Dorrie D. Hagelund

J. Vredenburg

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

August 14, 1981

Charles G. Mortimer, Jr.
49 West La.
Madison, NJ 07940

Dear Mr. Mortimer:

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
Kenneth M. Katz
Berger & Katz
26-20 Bell Blvd.
Bayside, NY 11360
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CHARLES G. MORTIMER, JR.	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1974.	:	

Petitioner, Charles G. Mortimer, Jr., 49 West Lane, Madison, New Jersey 07940, 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. 20296).

On February 20, 1981, petitioner advised the State Tax Commission, in writing, that he 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 days worked at home by petitioner may properly constitute days worked without New York State for the purpose of allocating his wage income to sources within and without the State.

FINDINGS OF FACT

1. Petitioner, Charles G. Mortimer, Jr. (hereinafter petitioner), filed a New York State Income Tax Nonresident Return for the year 1974 whereon he allocated his wage income derived from Westfall Productions, Inc. to sources within and without New York State.

2. On January 6, 1977, the Audit Division issued a Statement of Audit Changes to petitioner wherein, based on an analysis of information submitted, his days claimed as having been worked outside New York State were reduced from seventy seven (77) to twenty five (25). Said reduction of fifty two (52) days was the result of the disallowance of such days where petitioner worked at his New Jersey residence. Accordingly, a Notice of Deficiency was issued against petitioner on September 26, 1977 asserting additional personal income tax of \$1,753.54, plus interest of \$365.06, for a total due of \$2,118.60.

3. During the year at issue petitioner was employed as a motion picture producer for Westfall Productions, Inc., 521 Fifth Avenue, New York, New York.

4. Petitioner contended that his home office constituted a bona fide office of his employer since Westfall Productions, Inc. reimbursed him for the expenses attributable to the maintenance of such office. He contended that Westfall Productions, Inc. decided to open a New Jersey office at his residence since several films were being produced in the vicinity of his home and that it was a business necessity for his employer to maintain such an office which was proximate to the productions.

CONCLUSIONS OF LAW

A. 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. (20 NYCRR 131.16).

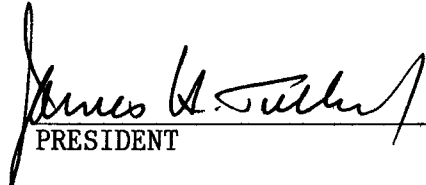
B. That the petitioner herein has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that the days he worked at home were for his employer's necessity, rather than for his own convenience.

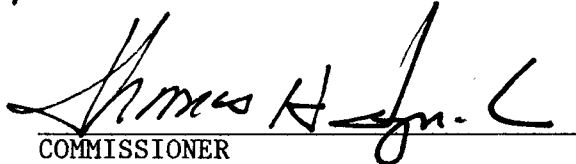
C. That the petition of Charles G. Mortimer, Jr. is denied and the Notice of Deficiency dated September 26, 1977 is sustained together with such additional interest as may be lawfully owing.

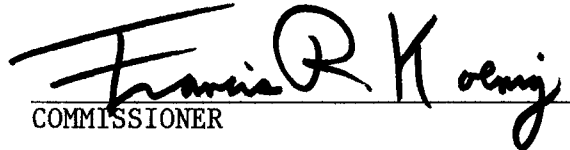
DATED: Albany, New York

STATE TAX COMMISSION

AUG 14 1981


PRESIDENT


COMMISSIONER


COMMISSIONER