

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Donald A. Pattison :
and Trudy K. Pattison :
: 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 :
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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Donald A. Pattison and Trudy K. Pattison the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald A. Pattison
and Trudy K. Pattison
RD #2, Box 157
Frenchtown, NJ 08825

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
25th day of September, 1981.

Ann A. Haglund

J. Vredenburg

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

September 25, 1981

Donald A. Pattison
and Trudy K. Pattison
RD #2, Box 157
Frenchtown, NJ 08825

Dear Mr. & Mrs. Pattison:

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 :
DONALD A. PATTISON and TRUDY K. PATTISON : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1975. :

Petitioners, Donald A. Pattison and Trudy K. Pattison, RD 2, Box 157, Frenchtown, New Jersey 08825, 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 1975 (File No. 22149).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 26, 1981 at 9:15 A.M. Petitioner Donald A. Pattison appeared pro se and for his wife, petitioner Trudy K. Pattison. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether thirteen days worked in New Jersey during 1975 can be considered as days worked without New York State for income allocation purposes pursuant to 20 NYCRR 131.16.

FINDINGS OF FACT

1. Petitioners, Donald A. Pattison and Trudy K. Pattison, timely filed a joint New York State Income Tax Nonresident Return for the year 1975, on which salary income was allocated to New York State based on the number of days worked within and without New York State. The aforementioned tax return indicated that of a total of 244 working days in 1975, 130 days were worked in

New York State. Accordingly, New York income of \$35,696.76 was calculated by applying a ratio of 130/244 to total salary income of \$67,000.08.

2. On May 22, 1978 the Audit Division issued a Notice of Deficiency for \$338.30, plus interest, along with an explanatory Statement of Audit Changes which stated, in part:

"Time spent at home is not a proper basis for allocation of income outside New York State; therefore, the 13 days worked at home are not allowable as working days outside New York State. Also, based on information submitted, we have allowed 12 vacation days and eight holidays as nonworking days. Allocation of income is revised as follows:"

Total days		365
Saturdays, Sundays	104	
Holidays	8	
Vacation	<u>12</u>	
Total nonworking days		<u>124</u>
Total working days		<u>241</u>
Less: Days worked outside New York State		<u>101</u>
Days worked inside New York State		<u>140</u>

Revised formula for allocation of income

$$140/241 \times \$67,000.08 = \$38,921.21$$

"The \$2,047.68 State income tax refund on Line 11(a), Schedule A must be subtracted on Line 4A, Page 1 of return. Total New York income in the Federal amount column is adjusted to \$62,545.68."

"Due to the adjustments noted above, the limitation percentage is revised as follows:"

$$\$38,921.21/\$62,545.68 = 62\%$$

"Itemized deductions to be computed by the limitation percentage is increased by \$1,000.00 to reflect the error in totaling interest expense."

The sole issue raised by petitioner, Donald A. Pattison, was the thirteen days "alleged" by the Audit Division to have been worked at home.

3. Petitioner, Donald A. Pattison, submitted a schedule to the Audit Division of days worked within and without New York State during the year 1975.

All days listed to have been worked in "Frenchtown, N.J." were considered by the Audit Division to have been worked at petitioner's home and were counted as days worked within New York State in accordance with 20 NYCRR 131.16.

4. Petitioner, Donald A. Pattison, is employed as a security analyst by a New York firm and is required to write research reports. Occasionally, these reports are written at a hunting club in Frenchtown, New Jersey, where he is not disturbed and where he is readily available to pursue his other business activities such as a tree nursery.

5. Petitioner Donald A. Pattison did not work at his home during the year 1975, but worked at the aforementioned hunting club for thirteen days in 1975. Petitioner contended that the quantity and quality of his reports could not have been accomplished at his employer's place of business, where he was subject to frequent interruptions. Also, petitioner contended that working at the hunting club allowed him to meet his commitments with the tree nursery.

CONCLUSIONS OF LAW

A. That the thirteen days worked at the hunting club in the State of New Jersey during the year 1975, were worked there by petitioner Donald A. Pattison for his own convenience and not for the necessity of his New York employer, regardless of petitioner's claim that the work was performed at the hunting club to be free from interruptions (Matter of Burke v. Bragalini, 10 A.D.2d 654); or that the work performed at the hunting club increased efficiency (Matter of Morehouse v. Murphy, 10 A.D.2d 764, app. dsmd. 8 NY.Y2d 932); or that it allowed him to pursue other business commitments (Matter of the Petition of Walter T. Margetts, Jr. and Josephine S. Margetts, N.Y.S.T.C. Decision, November 4, 1974). Therefore, for purposes of allocating salary income, said

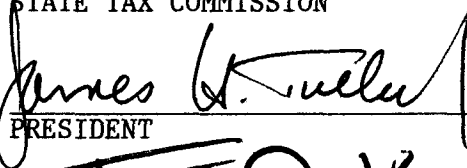
days must be held to be days worked within New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

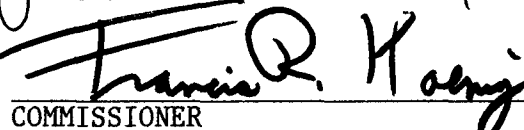
B. That the petition of Donald A. Pattison and Trudy K. Pattison is denied and the Notice of Deficiency issued May 22, 1978 is sustained, together with such additional interest as may be lawfully owing.

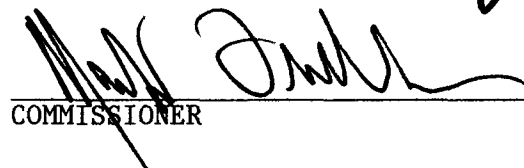
DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER