

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
James M. & Genevieve M. Quigley :
: 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 1971

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 10th day of April, 1981, he served the within notice of Decision by certified mail upon James M. & Genevieve M. Quigley, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James M. & Genevieve M. Quigley
4952 Sentinel Dr.
Sumner, MD 20016

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
10th day of April, 1981.

Carrie A. Hagellard

[Signature]

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

April 10, 1981

James M. & Genevieve M. Quigley
4952 Sentinel Dr.
Sumner, MD 20016

Dear Mr. & Mrs. Quigley:

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 :

JAMES M. QUIGLEY and GENEVIEVE M. QUIGLEY :

DECISION

for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1971.

Petitioners, James M. Quigley and Genevieve M. Quigley, 4952 Sentinel Drive, Sumner, Maryland, 20016, 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 1971 (File No. 13360).

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 23, 1980 at 2:45 P.M. Petitioner James M. Quigley appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner James M. Quigley is properly entitled to allocate his salary income to sources within and without New York State.

II. Whether petitioner is properly entitled to an adjustment to income of \$3,416.00.

FINDINGS OF FACT

1. James M. Quigley and Genevieve M. Quigley timely filed a joint New York State Income Tax Resident Return for the period August 1 through December 31, 1971. For the preceding period of taxable year 1971, they filed a joint New York State Income Tax Nonresident Return whereon James M. Quigley (hereinafter

petitioner) claimed an allocation of his prorated salary income to sources within and without New York State.

2. On October 1, 1973, the Audit Division issued a Statement of Audit Changes wherein, as a result of petitioner's failure to respond to inquiry letters, his claimed allocation was disallowed in full. Additionally, a claimed adjustment to income of \$3,416.00 was disallowed since a required explanation of same was never furnished by petitioner. Accordingly, a Notice of Deficiency was issued against petitioners on July 29, 1974 asserting additional personal income tax of \$2,500.38, plus interest of \$343.30, for a total due of \$2,843.68.

3. During the entire year 1971, petitioner was employed by U.S. Plywood-Champion Papers Inc., a New York corporation headquartered at 777 3rd Avenue, New York City. He held the position of Vice-President for Environmental Quality and was responsible for developing and implementing a water pollution and air pollution program. He was required to work with the Environmental Protection Agency and held the overall responsibility for the corporation's government relations. As such, he maintained that he was required to work in Washington, D.C. as well as New York State.

4. Petitioner's claimed allocation was based on 70 days worked in New York State out of a total of 150 days worked in all locations during his nonresident period. The allocation was applied to \$29,068.00. However it was erroneous to apply the allocation to said amount since a review of petitioners' nonresident return shows it to represent total Federal income rather than petitioner's prorated portion of wages, which were reported as \$30,625.00.

5. Petitioner contended that when he was in Washington, D.C. he worked out of his home in nearby Kensington, Maryland since his employer did not maintain a Washington, D.C. office.

6. Petitioner submitted a schedule indicating the location where he worked during each day of his nonresident period. Said schedule was supported by both an office and a personal calendar, which were also submitted into evidence. Review of said documents indicated that petitioner worked a total of 132 days during his nonresident period. Of said total days worked, 21 days were worked without New York State based on the necessity of his employer. Actual days worked in New York by petitioner during this period were 64.

7. During petitioner's nonresident period (January 1 through July 31, 1971) he maintained a small efficiency apartment in New York City. Said apartment, which was used by petitioner while working in New York, consisted of one large all-purpose room plus a small kitchen and bath. The adjustment to income which petitioner claimed on his nonresident return of \$3,416.00 represented expenses incurred in maintaining said apartment. Such expenses were comprised of rent of \$2,925.00, telephone of \$197.58, utilities of \$93.52 and food of \$200.00. Although petitioner was a nonresident for a seven month period during 1971, nine rent payments of \$325.00 each were deducted.

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).

Since petitioner was obligated out of his employer's necessity to work 21 days outside New York State, said days are properly allocated to sources without New York State. Accordingly, petitioner's allocation schedule is recomputed as follows:

Wages (to be allocated)	\$30,625.00
Total days in period	211
Total non-working days (weekends, holidays, vacation, etc.)	79
Total days worked in period	132
Deduct days worked outside NYS	21
Days worked in NYS (for allocation purposes)	111

$$\frac{111}{132} \times \$30,625.00 = \$25,752.84 \text{ (Wages Allocated to NYS)}$$

B. That petitioner is properly entitled to deduct as an adjustment to income, a portion of the expenses he incurred to maintain the New York apartment during his nonresident period pursuant to section 62(2)(B) of the Internal Revenue Code and Article 22 of the Tax Law. Such adjustment is computed as follows:

Total days actually worked in NY during nonresident period	64	x	2,766 (amount claimed less 2 months rent)	=	<u>\$838.98</u>
Total days in period	211				

C. That the petition of James M. Quigley and Genevieve M. Quigley is granted to the extent provided in Conclusions of Law "A" and "B", supra, and that said petition is, in all other respects, denied.

D. That the Audit Division is hereby directed to modify the Notice of Deficiency dated July 29, 1974 to be consistent with the decision rendered herein.

DATED: Albany, New York

APR 10 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER