

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
Edwin Schlossberg

:

:

: 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.

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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 Edwin Schlossberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edwin Schlossberg  
Johnson Hill Rd.  
Chester, MA 01011

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. Haglund*

*J. Vredenburg*

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

June 19, 1981

Edwin Schlossberg  
Johnson Hill Rd.  
Chester, MA 01011

Dear Mr. Schlossberg:

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

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In the Matter of the Petition	:	
of	:	
EDWIN SCHLOSSBERG	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

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Petitioner, Edwin Schlossberg, Johnson Hill Road, Chester, Massachusetts 01011, 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. 20241).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York on January 9, 1981 at 1:15 P.M. Petitioner, Edwin Schlossberg, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether the days on which petitioner, Edwin Schlossberg, worked at his home in Chester, Massachusetts, constituted days worked outside New York State for income allocation purposes.

FINDINGS OF FACT

1. Petitioner, Edwin Schlossberg, filed a New York State income tax nonresident return for 1974. On said return, petitioner allocated his income on the basis of days worked within and without New York State.

2. On June 27, 1977, the Audit Division issued a Notice of Deficiency against the petitioner for subject year, asserting personal income tax of

\$936.42, plus interest of \$175.11, for a total due of \$1,111.53. The Notice was issued on the basis that income earned by petitioner, Edwin Schlossberg, for days worked at his home in Chester, Massachusetts, was not allocable to sources outside New York State, but rather such income was attributable to New York State.

3. Petitioner, Edwin Schlossberg, for subject year, was employed by Alfred Schlossberg Co., Inc. (hereinafter "corporation"), with offices in New York, as a textile designer of shirt fabrics.

Petitioner would go to the corporate offices in New York City to obtain shirt fabric and discuss with the corporate president, possible patterns which could be executed on the material. Petitioner would then return to his home in Chester, Massachusetts, and prepare designs suitable for the fabrics. Upon completing the designs, the petitioner would then deliver them to the president of the corporation for his approval.

Petitioner estimates that for the year at issue he made a maximum of twenty-four (24) one day trips to the corporate office in New York.

4. Petitioner contends that the nature of his work as an artist required a work environment free of disturbance and interruption, which environment was unavailable at the corporate offices. Petitioner further contends that the corporation was unable to provide him with necessary work space because of its limited facilities.

#### CONCLUSIONS OF LAW

A. That days worked by petitioner Edward Schlossberg at his home in Chester, Massachusetts, for 1974 were not days worked without New York State for income allocation purposes. That the services performed at his out-of-state home were for his convenience and not a requirement, nor necessitated by his

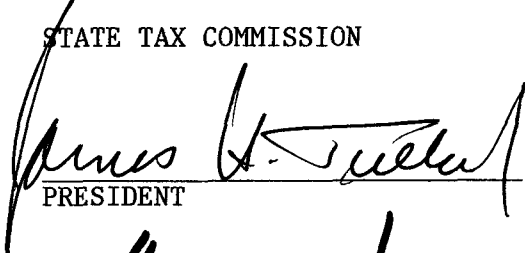
employer (Matter of Speno, 35 N.Y.2d 256; Matter of Gross v. State Tax Commission, 62 A.D.2d 1117).

B. That the petition of Edwin Schlossberg is denied and the Notice of Deficiency issued June 27, 1977 for the year 1974 is sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

JUN 19 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER