

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leroy B. & Helen H. Simmons :
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 :
1970.

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 20th day of November, 1981, he served the within notice of Decision by certified mail upon Leroy B. & Helen H. Simmons, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

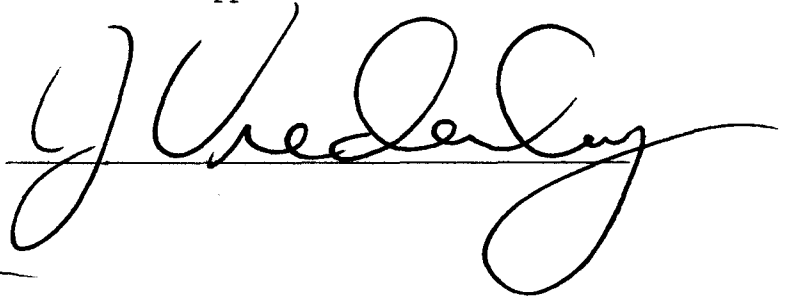
Leroy B. & Helen H. Simmons
9 Warren Ave.
Seekonk, MA

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
20th day of November, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION

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Leroy B. & Helen H. Simmons :
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of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1970.

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 20th day of November, 1981, he served the within notice of Decision by certified mail upon Archibald B. Kenyon, Jr. the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Archibald B. Kenyon, Jr.
Kenyon and Aukerman
51 Tower Hill Rd.
Wakefield, RI 02879

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
20th day of November, 1981.

Annice A. Hayell

J. Vredenburg

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

November 20, 1981

Leroy B. & Helen H. Simmons
9 Warren Ave.
Seekonk, MA

Dear Mr. & Mrs. Simmons:

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
Archibald B. Kenyon, Jr.
Kenyon and Aukerman
51 Tower Hill Rd.
Wakefield, RI 02879
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

LEROY B. SIMMONS and HELEN H. SIMMONS : DECISION

for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1970.

Petitioners, Leroy B. Simmons and Helen H. Simmons, 9 Warren Avenue, Seekonk, Massachusetts, 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 1970 (File No. 13640).

On January 25, 1980, 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 petitioners properly allocated their wage income on the basis of days worked within and without New York State.

FINDINGS OF FACT

1. Petitioners, Leroy B. Simmons and Helen H. Simmons, timely filed a New York State income tax nonresident return for 1970, whereby they allocated petitioner Leroy B. Simmons' salary income on the basis of days worked within and without New York State. Petitioners claimed a total of 233 working days, of which 60 days were worked in New York State.

2. On June 25, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioners, based on petitioners' failure to establish that any of the days claimed as worked outside New York are those which may be required as a proper basis for allocation. Accordingly, the Income Tax Bureau asserted additional personal income tax of \$796.50, plus interest of \$104.85, for a total of \$901.35.

3. Petitioners were residents of the State of Massachusetts during 1970. Petitioner Leroy B. Simmons was employed by Astro Dye Works, Inc. of Calhoun, Georgia. He was in charge of sales for the New England area. Petitioner Leroy B. Simmons spent most of his time in Massachusetts and traveling throughout New England. He spent 60 days in the State of New York in the service of his employer.

CONCLUSIONS OF LAW

A. That petitioners, Leroy B. Simmons and Helen H. Simmons, properly allocated petitioner Leroy B. Simmons' wage income for 1970 on the basis of days worked within and without New York State in accordance with section 632(c) of the Tax Law and 20 NYCRR 131.16.

B. That the petition of Leroy B. Simmons and Helen H. Simmons is granted and the Notice of Deficiency issued June 25, 1973 for 1970 is cancelled.

DATED: Albany, New York
NOV 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER