

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stan J. & Helen J. Stanley :
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 :
1972.

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 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Stan J. & Helen J. Stanley, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

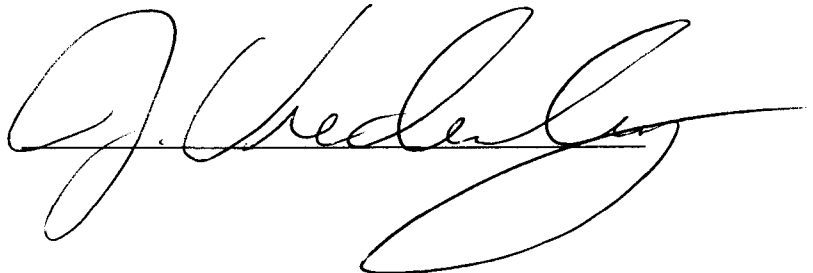
Stan J. & Helen J. Stanley
31 Mitchell Pl.
Greenwich, CT 06830

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
23rd day of October, 1981.





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

October 23, 1981

Stan J. & Helen J. Stanley
31 Mitchell Pl.
Greenwich, CT 06830

Dear Mr. & Mrs. Stanley:

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
STAN J. STANLEY and HELEN J. STANLEY
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1972.

DECISION

Petitioners, Stan J. Stanley and Helen J. Stanley, 31 Mitchell Place, Greenwich, Connecticut 06830, 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 1972 (File No. 19562).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building #9, Albany, New York, on December 11, 1980 at 2:45 P.M. and continued to its conclusion on December 12, 1980 at 9:30 A.M. Petitioner Stan J. Stanley appeared pro se and for his wife. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether petitioner Stan J. Stanley is entitled to allocate to New York income received from Uniroyal, Inc. based upon a percentage which is determined by placing the volume of business transacted by him from New York sources over total volume of business transacted by him.

II. Whether the Audit Division has properly allocated the income received from Uniroyal, Inc. by petitioner Stan J. Stanley based on days worked within New York over total working days.

FINDINGS OF FACT

1. Petitioners, Stan J. Stanley and Helen J. Stanley, timely filed a joint New York State nonresident income tax return for the year 1972 on April 2, 1973. On said return income received from Uniroyal, Inc. (hereinafter "Uniroyal") and earned by petitioner Stan J. Stanley was allocated to New York based on days worked within New York (40) over total working days (208).

2. A Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes was executed by petitioners on December 8, 1975, extending the period of assessment for the year 1972 to April 15, 1977.

3. On April 11, 1977, the Audit Division issued a Notice of Deficiency against petitioners asserting additional personal income tax due of \$848.02, together with interest, for the year 1972. Said Notice of Deficiency was based on a Statement of Audit Changes, originally dated February 7, 1977, wherein the Audit Division revised petitioners' allocation of income received from Uniroyal by increasing the number of days worked in New York to 197 and also increasing the total number of working days to 217. Other adjustments were made in the aforesaid Statement of Audit Changes which were not protested by petitioners and are therefore not at issue.

4. During the tax year 1972, petitioner Stan J. Stanley was employed as a salesman by Uniroyal. Pursuant to a written agreement entered into between said parties, Mr. Stanley received an unspecified monthly salary plus an unspecified commission on those sales exceeding \$335,000.00. A wage and tax statement was attached to petitioners' 1972 New York State return which indicated that petitioner Stan J. Stanley received wages of \$24,302.75 from Uniroyal and that Federal, New York State and F.I.C.A. taxes were withheld from said wages.

No documentary evidence or testimony was adduced at the hearing held herein as to what portion of the \$24,302.75 received from Uniroyal constituted salary income and what portion constituted commission income.

5. Petitioner Stan J. Stanley, as a sales representative for Uniroyal, was responsible for coverage of several counties in Connecticut and New York. He reported to a sales manager who was located within New York State, however, he was not provided office space at Uniroyal's New York office and was required by Uniroyal to work out of his personal residence located in Connecticut. Except for occasional sales meetings, petitioner Stan J. Stanley's contact with Uniroyal's New York office was generally by mail and telephone.

6. Petitioner Stan J. Stanley solicited sales on behalf of Uniroyal via telephone, mail and personal visits to both the Connecticut and New York accounts. He did not keep a diary or maintain any other record which would document his work location on a day to day basis. Petitioner Stan J. Stanley submitted into evidence "Salesmen's Weekly Activity Reports" for the entire 1972 year. Said reports indicated a date, a customer and location and the order. Mr. Stanley testified that these reports were a record of the sale that was recorded on that date and did not indicate his physical location on that particular date.

7. Based on testimony and documentary evidence presented, the record supports that Stan J. Stanley worked outside New York for the periods 1/24/72 to 1/28/72, 2/14/72 to 2/25/72, 7/24/72 to 7/28/72 and 9/17/72 to 9/30/72; for a total of 36 days. Included in said 36 days are 3 Saturdays and 3 Sundays. Documentary evidence has also been submitted to show that petitioner Stan J. Stanley took a total of 25 vacation days during 1972.

8. Petitioner Stan J. Stanley contended that he was entitled to allocate the income received from Uniroyal based upon the volume of business transacted by him in New York placed over the total volume of business transacted by him. No documentary evidence was introduced to support such an allocation.

CONCLUSIONS OF LAW

A. That petitioners have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that they are entitled to allocate the Uniroyal income based upon volume of business within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.15.

B. That petitioners have sustained the burden of proof to show that petitioner Stan J. Stanley worked a total of 36 days outside New York State during 1972.

C. That petitioner Stan J. Stanley's total nonworking days in 1972 are adjusted to 153 computed as follows:

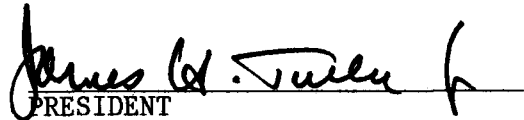
Saturdays and Sundays	106
Less: those included in days worked outside New York	<u>6</u>
Net Saturdays and Sundays	<u>100</u>
Holidays	11
Sick days	17
Vacation days	<u>25</u>
Total nonworking days	<u>153</u>

D. That the petition of Stan J. Stanley and Helen J. Stanley is granted to the extent indicated in Conclusions of Law "B" and "C"; that the Audit Division is directed to recompute the deficiency in accordance with the decision

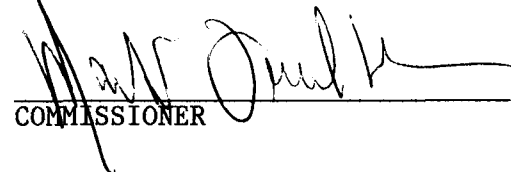
rendered herein and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
OCT 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER