

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Robert & Julie Van Camp :

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 Years 1971 & 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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Robert & Julie Van Camp, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert & Julie Van Camp
177 Barnes Hill Rd.
Concord, MA 01742

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
5th day of February, 1981.

Cornie R. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Personal Income Tax :

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for the Years 1971 & 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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Nat Silver the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Nat Silver
Shubert & Silver
950 Third Ave.
New York, NY 10022

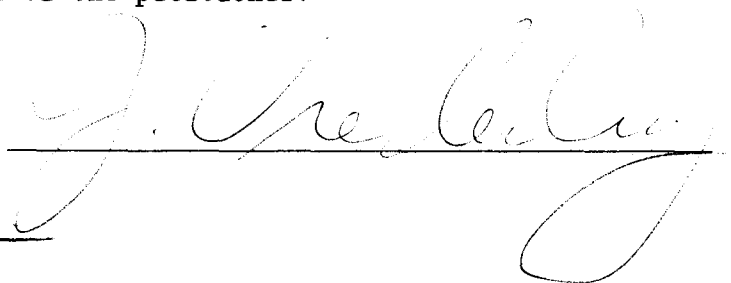
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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

5th day of February, 1981.


Cornelia R. Hagelund


Jay Vredenburg

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

February 5, 1981

Robert & Julie Van Camp
177 Barnes Hill Rd.
Concord, MA 01742

Dear Mr. & Mrs. Van Camp:

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
Nat Silver
Shubert & Silver
950 Third Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ROBERT VAN CAMP and JULIE VAN CAMP	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1971 and 1972.	:	

Petitioners, Robert Van Camp and Julie Van Camp, 177 Barnes Hill Road, Concord, 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 years 1971 and 1972 (File No. 13681).

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 March 10, 1980 at 9:15 A.M. Petitioners appeared by Nat Silver, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether salary income was properly allocated based on the number of days worked within and without New York State.

FINDINGS OF FACT

1. Petitioners, Robert Van Camp and Julie Van Camp, timely filed joint New York State income tax nonresident returns for the years 1971 and 1972, on which salary income was allocated based on the number of days worked within and without New York State. Petitioner Robert Van Camp allocated salary income of \$46,001.00 by 121/235 for 1971, and salary income of \$79,079.00 by 169/243 for 1972.

2. On February 24, 1975, the Audit Division issued a Notice of Deficiency in the sum of \$1,399.19 plus interest, along with an explanatory Statement of Audit Changes on which the allocation of salary income was recomputed for the years 1971 and 1972 based on information submitted by petitioners. The recomputation for the year 1971 was conceded and is not at issue.

3. Petitioner Robert Van Camp received salary income during the year 1972 from the following three firms:

RVM, Inc.	\$44,000.00
Aunt Millie's Sauces, Inc.	12,002.00
Moseley Sacco Inc.	23,077.00

RVM, Inc. and Aunt Millie's Sauces, Inc. are affiliated, and all time and effort was expended simultaneously. Therefore, the Audit Division allocated the salary from RVM, Inc. and Aunt Millie's Sauces, Inc., (in the sum of \$56,002.00) by 190/243, and the salary from Moseley Sacco Inc. by 225/243.

4. Although petitioner agreed that the salaries should be allocated separately in the manner prescribed by the Audit Division, he disagreed with the ratios of 190/243 and 225/243 used. During 1972 petitioner worked 53 days for RVM, Inc. and Aunt Millie's Sauces, Inc. and 18 days for Moseley Sacco Inc. outside New York State in the service of his employers. Accordingly, petitioner submitted additional information and documentation, which outlined the following allocation:

<u>TOTAL DAY WORKED DURING 1972</u>		<u>243</u>
Allocated as follows:		
Moseley Sacco Inc.	30	
RVM, Inc. & Aunt Millie's Sauces, Inc.	<u>213</u>	
Total		<u>243</u>
<u>RVM, Inc. & Aunt Millie's Sauces, Inc.</u>		
Total days worked	213	
Out of New York State	<u>53</u>	
Worked in New York State	<u>160</u>	
$\frac{160}{213} \times \$56,002.00$		\$42,067.00

Moseley Sacco, Inc.

Total days worked	30
Out of New York State	<u>18</u>
Worked in New York State	<u>12</u>
$\frac{12}{30} \times \$23,007.00$	<u>9,203.00</u>
<u>Total New York Income</u>	<u>\$51,270.00</u>

Petitioner's new allocation for Moseley Sacco, Inc. did not include five days worked at his home in Massachusetts. Information as to the nature, character, and purpose of services rendered at petitioner's home was not submitted.

CONCLUSIONS OF LAW

A. That petitioners have failed to show that the five days petitioner Robert Van Camp worked at home in 1972 were so worked at home for the necessity of his employer rather than for his convenience. Therefore, these days are considered as days worked within New York State, for income allocation purposes, 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 Robert Van Camp and Julie Van Camp is granted to the extent that petitioner's 1972 salary income of \$56,002.00 and \$23,007.00 is allocated to New York State by 160/213 and 17/35, respectively, in accordance with 20 NYCRR 131.16.

C. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued February 24, 1975, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

FEB 05 1981

STATE TAX COMMISSION

James V. Tully
PRESIDENT

Thomas H. S. C.
COMMISSIONER

Francis R. Koeng
COMMISSIONER