

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Edwin J. Beyer : AFFIDAVIT OF MAILING
and Marilyn C. Beyer :
:
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

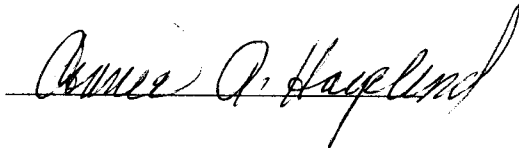
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of January, 1982, he served the within notice of Decision by certified mail upon Edwin J. Beyer and Marilyn C. Beyer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

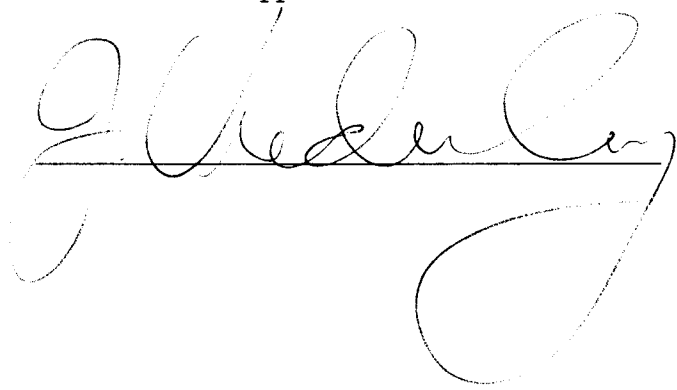
Edwin J. Beyer
and Marilyn C. Beyer
25 Berkley Cir.
Baskin Ridge, NJ 07920

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
29th day of January, 1982.


Commissioner of Taxation and Finance


Jay Vredenburg

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

January 29, 1982

Edwin J. Beyer
and Marilyn C. Beyer
25 Berkley Cir.
Baskin Ridge, NJ 07920

Dear Mr. & Mrs. Beyer:

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
EDWIN J. BEYER and MARILYN C. BEYER
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1970.

DECISION

Petitioners, Edwin J. Beyer and Marilyn C. Beyer, 25 Berkeley Circle, Basking Ridge, New Jersey 07920, 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. 15306).

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 17, 1980 and rescheduled on October 6, 1980. Petitioner Edwin J. Beyer appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. Petitioners, Edwin J. Beyer and Marilyn C. Beyer, timely filed a joint New York State Income Tax Nonresident Return for the year 1970, on which salary income of \$14,431.50 was allocated based on the number of days worked within and without New York State. In addition, Federal itemized deductions in the sum of \$4,023.00 were reported, but petitioners did not summarize them, as

required, on schedule B, page 2, of the aforementioned New York State tax return.

2. On July 30, 1973, the Income Tax Bureau issued a Notice of Deficiency for \$402.71, plus interest of \$55.36, along with an explanatory Statement of Audit Changes, on which;

- (a) the allocation based on days worked within and without New York State was disallowed and salary income reported was held fully taxable.
- (b) the standard deduction of \$1,000.00 was allowed in lieu of itemized deductions claimed. In a letter signed by petitioner Edwin J. Beyer on October 7, 1980, this item was conceded and, therefore, not at issue.

3. Petitioner Edwin J. Beyer was employed by a New York corporation as a salesman with customers in New York City, Connecticut, Pennsylvania, Delaware and Maryland.

4. Petitioner Edwin J. Beyer rendered his selling activities at his customer's place of business and submitted a schedule of days worked within and without New York State, which was derived from a diary maintained by him during the year 1970. The aforementioned schedule resulted in the following breakdown:

Total working days in 1970	240
Days worked at home	6
Days worked totally (or partly) in New York	59

5. Petitioner Edwin J. Beyer maintained an office at his home in New Jersey, which he utilized during the year 1970 to render services on behalf of his employer. Petitioner worked at his home for "expediency" and, therefore, he reasoned that both he and his employer derived a benefit from it. A letter dated October 15, 1980, from petitioner's employer stated:

"This will advise that EDWIN J. BEYER, employed as an outside salesman, is expected to provide office space in his home for completion of Call Reports and correspondence with customers. He also houses a company-owned car on his property. None of these expenses are reimbursed by our company."

CONCLUSIONS OF LAW

A. That the six days worked during 1970 at petitioner's home in New Jersey were worked there by reason of his own convenience and not for the necessity of his New York employer, and accordingly, 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 Edwin J. Beyer and Marilyn C. Beyer is granted to the extent that salary income of \$14,431.50 is allocated to New York State by 65/240 (or .2708) in accordance with 20 NYCRR 131.4(b) and 20 NYCRR 131.16.

C. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued July 30, 1973; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER