

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
James & Kathryn Cavanaugh : 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 :  
1976.

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State of New York  
County of Albany

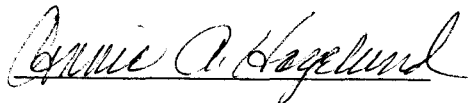
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of May, 1982, he served the within notice of Decision by certified mail upon James & Kathryn Cavanaugh, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

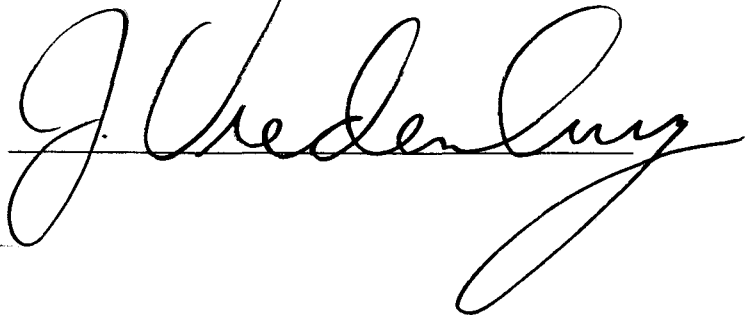
James & Kathryn Cavanaugh  
11 Featherleigh Rd.  
Convent Station, NJ 07961

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  
21st day of May, 1982.

  
Bonnie A. Hagelund

  
Jay Vredenburg

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

May 21, 1982

James & Kathryn Cavanaugh  
11 Featherleigh Rd.  
Convent Station, NJ 07961

Dear Mr. & Mrs. Cavanaugh:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

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	:	
	:	
JAMES L. CAVANAUGH and KATHRYN L. CAVANAUGH	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1976.	:	

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Petitioners, James L. Cavanaugh and Kathryn L. Cavanaugh, 11 Featherleigh Road, Convent Station, New Jersey 07961, 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 1976 (File No. 21596).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 21, 1981 at 9:15 A.M. Petitioner James L. Cavanaugh appeared pro se and for his wife Kathryn L. Cavanaugh. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether days worked at petitioners' home in New Jersey constituted days worked outside New York State for purposes of allocating salary income received from RCA Corporation.

FINDINGS OF FACT

1. Petitioners, James L. Cavanaugh and Kathryn L. Cavanaugh, filed a New York State Income Tax Nonresident Return for 1976 whereon petitioner James L. Cavanaugh allocated wages from his New York employer, RCA Corporation, on the basis of days worked within and without New York State.

2. On October 27, 1977, the Audit Division issued a Statement of Audit Changes to petitioners whereon twenty-eight (28) days that petitioner James L. Cavanaugh worked at his New Jersey residence were disallowed as days worked without New York State. Accordingly, a Notice of Deficiency was issued against petitioners on January 1, 1978, asserting additional personal income tax of \$22.75, plus interest of \$1.45, for a total due of \$24.20.

3. James L. Cavanaugh (hereinafter petitioner) contended that it was necessary for him to work at home for the following reasons:

- (a) One day was worked at home because the trains between New York and New Jersey were not running.
- (b) Twelve days worked at home while convalescing from a back problem.
- (c) Fifteen days were worked at home using the personal library maintained by petitioner at his home.

4. At the hearing, the petitioner presented, in part, the following statement from his employer:

"Mr. Cavanaugh was required by me to complete several projects which could not have been completed either at The Corporation's New York offices or in New York. He was required to work out of state, specifically at his home library where he personally maintains voluminous business data owned by him and not by RCA Corporation.

\* \* \*

Mr. Cavanaugh used these resources and accomplished in a timely manner the tasks given him. The Corporation had no right to compel Mr. Cavanaugh to bring any or all of these personal records to the New York office.

Mr. Cavanaugh has had a history of a back problem.

\* \* \*

I have insisted that Mr. Cavanaugh work at home on occasions when the back was aggravated. While this too is extraordinary in my business career, I am personally familiar with the workers compensation liability that has accrued to The Corporation, and which could happen in Mr. Cavanaugh's case.

During these limited times, Mr. Cavanaugh has been required to work on projects which accessed his files.

\* \* \*

In my judgement as his employer, the work done at his home library was not for his convenience.

This Corporation has a policy of requiring that all employees work at a designated employee office. This Corporation also has a policy of requiring employees to work out of the office and New York State only to perform duties that cannot be done in the office. In this unusual case, I believe it is improper to penalize Mr. Cavanaugh for working out of New York. The assigned work-station just so happened to be his home in New Jersey.

If the same files were maintained in one of our Corporate locations in New Jersey (such as Cherry Hill), Mr. Cavanaugh would have been required to work there and not at home."

5. RCA Corporation furnished petitioner with an office at its administrative offices located in New York City.

6. Petitioner testified the work could only been done where his library was located though there was no requirement that the library be located in New Jersey.

#### CONCLUSIONS OF LAW

A. That any allowance claimed for days worked outside of the State must be based upon the performance of services which of necessity -- as distinguished from convenience -- obligate the employee to out-of-state duties in the service of his employer (20 NYCRR 131.16).

"[I]t is understandable that many people -- living within and out of the State -- may on occasion find it more advantageous to work at home, either during the regular working hours or extra "homework" after hours. Such a person living in the State is not entitled to special tax benefits and, intriguing as it may be, the commuter from outside the State is entitled to no special benefits." (Burke v. Bragalini, 10 A.D.2d 654).

That in this instant case, the petitioner has failed to show that his employer required him out of necessity to live and/or have his library out of

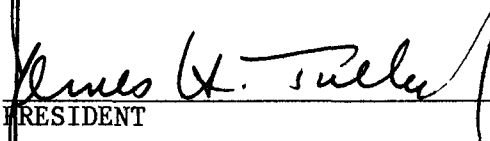
the State, nor to show that the work performed by petitioner could not have been done within the State. Therefore, the work performed by petitioner at his home was for his own convenience and not out of necessity of his New York employer, even though his employer may have required him to work at his home which in this instance was out-of-state. That the allocation of days worked within and without New York State by petitioner, James L. Cavanaugh, as determined by the Audit Division, is correct.

B. That the petition of James L. Cavanaugh and Kathryn L. Cavanaugh is denied and the Notice of Deficiency dated January 1, 1978 is sustained, together with such additional interest as may be lawfully owing.

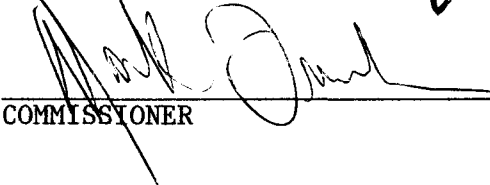
DATED: Albany, New York

MAY 21 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER