

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard R. & Dorothy H. Popham :
:
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 :
1974. :

AFFIDAVIT OF MAILING

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 26th day of February, 1982, he served the within notice of Decision by certified mail upon Richard R. & Dorothy H. Popham, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard R. & Dorothy H. Popham
88 Stonebridge Rd.
Wilton, CT

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
26th day of February, 1982.

Carmie A. Hagelund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard R. & Dorothy H. Popham :

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 :
1974 :

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 26th day of February, 1982, he served the within notice of Decision by certified mail upon Pierce J. Weston the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Pierce J. Weston
353 Lexington Ave.
New York, NY 10016

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
26th day of February, 1982.

Connie A. Hagelund

Jay Vredenburg

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

February 26, 1982

Richard R. & Dorothy H. Popham
88 Stonebridge Rd.
Wilton, CT

Dear Mr. & Mrs. Popham:

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
Pierce J. Weston
353 Lexington Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RICHARD R. POPHAM and DOROTHY H. POPHAM	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioners, Richard R. Popham and Dorothy H. Popham, 88 Stonebridge Road, Wilton, Connecticut, 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 1974 (File No. 25855).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 9, 1981 at 9:15 A.M. Petitioner, Richard R. Popham, appeared with Pierce J. Weston, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether days worked at petitioners' home in Connecticut constituted days worked without New York State for the purpose of allocating petitioner Richard R. Popham's salary income to sources within and without New York State.

FINDINGS OF FACT

1. Petitioners, Richard R. Popham and Dorothy H. Popham, timely filed a New York State Income Tax Nonresident Return for the year 1974 whereon Richard R. Popham (hereinafter petitioner) claimed an allocation of his salary income to sources within and without New York State.

2. On November 23, 1976 the Audit Division issued a Statement of Audit Changes wherein an adjustment was made disallowing 47 days from petitioner's total days claimed as having been worked outside New York State, since such days were worked at his Connecticut residence. Accordingly, a Notice of Deficiency was issued against petitioners on March 30, 1979 asserting additional personal income tax of \$1,142.22, plus interest of \$383.84, for a total due of \$1,526.06. Such notice was timely issued since on October 19, 1977 petitioners executed a Consent Fixing Period of Limitation Upon Assessment of Personal Income Taxes to April 15, 1979.

3. During 1974 petitioner was President of Laramore, Douglass & Popham of N.Y., Inc., a consulting engineering firm engaged in the business of planning, designing and managing construction of electric power facilities.

4. One of petitioner's major duties consisted of writing reports which were vital to the success of the firm. Such reports required a technical and economic expertise and a substantial creative literary effort. Petitioner maintained that in order for him to complete these reports, it was essential for him to have "peace and quiet". Accordingly, his report writing was done at his Connecticut residence where such conditions existed.

CONCLUSIONS OF LAW

A. That with respect to the earnings of nonresident employees and officers, 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)

Petitioner's need for a peaceful, quiet setting to complete his described duties is well understood. However, since such settings invariably

exist within the State of New York, it cannot be construed that petitioner was obligated out of his employer's necessity to perform such duties at his Connecticut residence. Accordingly, since such duties were performed at petitioner's residence for his own convenience, those days worked at his residence do not constitute days worked without New York State for salary allocation purposes within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

B. That the petition of Richard R. Popham and Dorothy H. Popham is denied and the Notice of Deficiency dated March 30, 1979 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

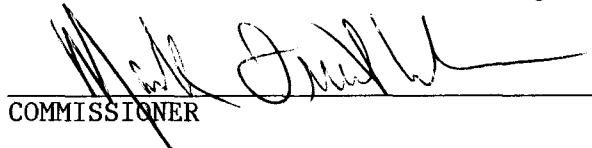
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FEB 26 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER