

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Charles E. Shults, Jr.
and Louise Shults :

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon Charles E. Shults, Jr. and Louise Shults the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

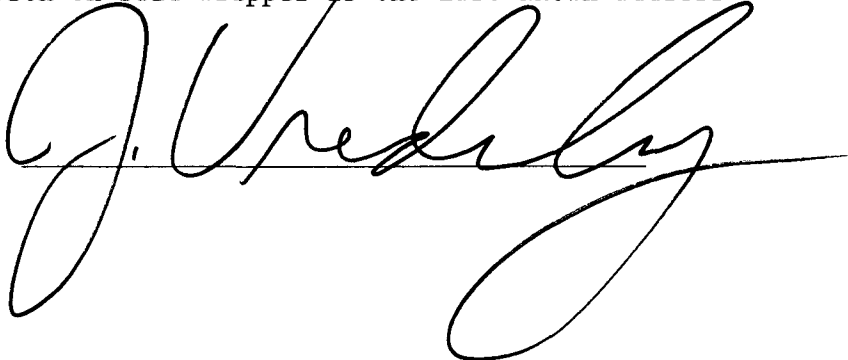
Charles E. Shults, Jr.
and Louise Shults
Heritage Village, Apt. 21
Southbury, CT 06488

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.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Charles E. Shults, Jr. :
and Louise Shults :

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon Seymour Schwartz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour Schwartz
98 Cutter Mill Rd.
Great Neck, NY 10021

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
29th day of January, 1982.

Amie A. Haglund

J. Vredenburg

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

January 29, 1982

Charles E. Shults, Jr.
and Louise Shults
Heritage Village, Apt. 21
Southbury, CT 06488

Dear Mr. & Mrs. Shults:

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
Seymour S. Schwartz
98 Cutter Mill Rd.
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CHARLES E. SHULTS, JR. and LOUISE SHULTS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioners, Charles E. Shults, Jr. and Louise Shults, Heritage Village, Apt. 214B, Southbury, Connecticut 06488, 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. 15364).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 19, 1979 at 2:45 P.M. Petitioners appeared by Seymour Schwartz, CPA. The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether petitioners, Charles E. Shults, Jr. and Louise Shults, had New York adjusted gross income for 1972 and if so,

II. Whether the days on which petitioner Charles E. Shults, Jr. worked at his home in Southbury, Connecticut during 1972 constituted days worked outside New York State for purposes of income allocation.

FINDINGS OF FACT

1. Petitioners, Charles E. Shults, Jr. and Louise Shults, filed a New York State Income Tax Nonresident Return for 1972, in which petitioner Charles E. Shults, Jr. allocated a portion of his wages to sources without New York State.

2. On May 15, 1975, a Statement of Audit Changes was issued against petitioners for 1972, imposing additional income tax due on the grounds that petitioner Charles E. Shults, Jr. improperly allocated 75 days worked at his home in Connecticut as days worked outside of New York State. Additionally, other adjustments were made to the allocation schedule of wage income to New York State. Accordingly, the Audit Division issued a Notice of Deficiency against petitioners March 29, 1976 for personal income tax due of \$374.89, plus interest of \$83.04, for a total of \$457.93.

3. Petitioner Charles E. Shults, Jr., a resident of Southbury, Connecticut, was employed as salesman by William G. Leininger Sales Corp. during 1972. Said corporation maintained a sales office in New York City. The corporation's mill is located in Mohnton, Pennsylvania. Petitioner's responsibility as an outside salesman included the solicitation of business in the New England states, parts of the Mid-Western states and certain accounts on the West Coast.

4. Petitioner Charles E. Shults, Jr. maintained an office in his Connecticut home. During 1972, he worked a total of 75 days in his home and considered these days as days worked outside New York State. Petitioner used said office to conduct all of his sales activities. He was not assigned or attached to the New York office and was not required to appear at the New York office. There were no desk facilities provided for him and he sent his sales orders, itineraries and expense accounts directly to Pennsylvania. Based on the foregoing, petitioner concluded that he was not subject to New York State income taxes and should not have allocated any of his income to New York State.

5. Petitioner Charles E. Shults, Jr. worked 75 days in New York State in 1972 for the purpose of attending sales meetings and meeting out-of-town customers and mill representatives. These 75 days were petitioner's basis of allocating his wages to sources within New York State.

CONCLUSIONS OF LAW

A. That petitioner Charles E. Shults, Jr. received income which was derived from or connected with New York sources in that he performed personal services within New York State and, therefore, had New York adjusted gross income for 1972 in accordance with the provisions of section 632(b) (1) (B) of the Tax Law and 20 NYCRR 131.4(b) .

B. That during 1972, petitioner Charles E. Shults, Jr. did not have an office in New York State and he sent his sales orders, itineraries and expense accounts directly to the corporation in Pennsylvania. Accordingly, the 75 days worked by him at his home in Connecticut did not generate income from New York State sources within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

C. That the petition of Charles E. Shults, Jr. and Louise Shults is granted to the extent of Conclusion of Law "B"; and, except as so granted, it is in all other respects denied.

DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER