

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Francis A. & Kathleen M. Speer :  
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 :  
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 8th day of September, 1982, he served the within notice of Decision by certified mail upon Francis A. & Kathleen M. Speer, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

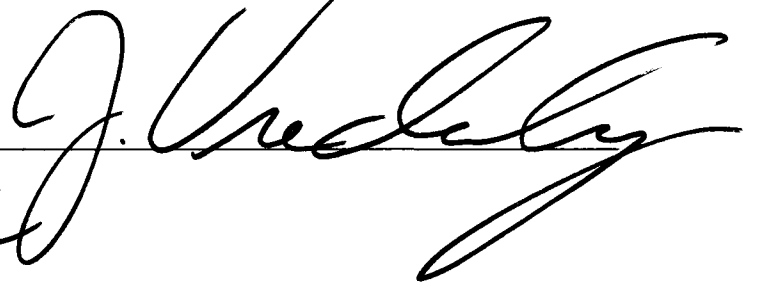
Francis A. & Kathleen M. Speer  
Carthage Arms, Apt. #6  
Carthage, NY 13619

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  
8th day of September, 1982.

  
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AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 170



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Francis A. & Kathleen M. Speer :

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 :  
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State of New York  
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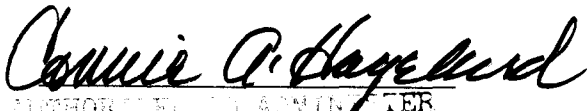
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of September, 1982, he served the within notice of Decision by certified mail upon Arthur B. Cilley the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur B. Cilley  
Price Waterhouse & Co.  
986 Bedford St.  
Stamford, CT 06905

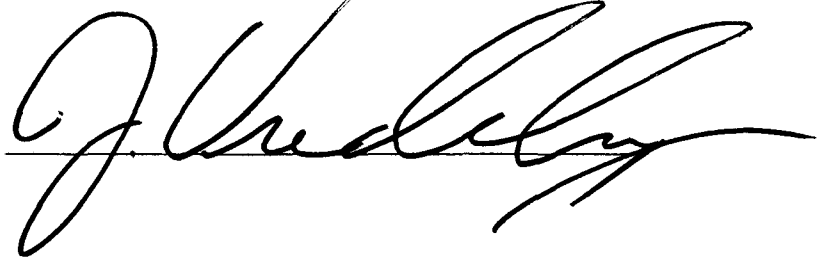
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
8th day of September, 1982.



AUTHORIZED TO ADMINISTER  
OATHS FOR STATE TAX LAW  
SECTION 111



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

September 8, 1982

Francis A. & Kathleen M. Speer  
Carthage Arms, Apt. #6  
Carthage, NY 13619

Dear Mr. & Mrs. Speer:

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  
Arthur B. Cilley  
Price Waterhouse & Co.  
986 Bedford St.  
Stamford, CT 06905  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
FRANCIS A. SPEER and KATHLEEN M. SPEER  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Year 1970.

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DECISION

Petitioners, Francis A. Speer and Kathleen M. Speer, Carthage Arms, Apt. #6, Carthage, New York 13619, 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. 13862).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 6, 1981 at 1:15 P.M. Petitioners, Francis A. Speer and Kathleen M. Speer, appeared by Arthur B. Cilley, CPA, of the accounting firm of Price, Waterhouse & Co. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether the days worked at home by petitioner Francis A. Speer providing consultive services to his former employer can be considered as days worked outside New York State.

II. Whether the deficiency issued against petitioners is barred by reason of laches.

FINDINGS OF FACT

1. Petitioners, Francis A. Speer and Kathleen M. Speer, timely filed a joint New York State nonresident income tax return for the year 1970 on

February 10, 1971. On said return wage income of \$55,000.00 earned by Francis A. Speer from the Crane Co. was allocated to New York sources based on a percentage determined by placing the number of days worked within New York (91) over the total number of working days (243).

2. On April 13, 1973 the Audit Division issued to petitioners a Notice of Deficiency for the year 1970, asserting that additional personal income tax of \$1,444.82 was due, together with interest. Said Notice of Deficiency was based on an explanatory Statement of Audit Changes wherein the number of days claimed on petitioners' return as worked outside New York State was reduced by 55, from 152 to 97. The 55 days disallowed as days worked outside New York State represent those days worked at home in New Jersey by Mr. Speer during the months of October, November and December, 1970.

3. Petitioner Francis A. Speer was Director of Operations for the Crane Co. from January 1, 1970 until September 30, 1970, when he voluntarily tendered his resignation due to excessive travel, health and other reasons. For the remaining three months of 1970, petitioner served as a consultant to the Crane Co. working solely out of his personal residence located within the State of New Jersey. Mr. Speer performed no services for the Crane Co. within New York State during the last three months of 1970. During this three-month period, petitioner Francis A. Speer continued to receive his full monthly salary and other benefits. The change in petitioner Francis A. Speer's status from that of Director of Operations to that of consultant was not covered by written instrument but was the result of an oral agreement.

4. During the period January 1, 1970 through September 30, 1970, Mr. Speer worked a total of 97 days outside New York State. For the last three months of

1970, where no work was performed within New York, petitioner Francis A. Speer claims a total of 67 days worked outside the State. Total days worked outside New York State during 1970 amounted to 164 (97 + 67), which is 12 more days than claimed on petitioners' return (152). The Audit Division, in its computation of the additional tax due, allowed credit for the additional 12 days by disallowing only 55 of the 67 days claimed worked at home during the period October 1, 1970 through December 31, 1970.

5. Total annual remuneration of \$55,000.00 earned by petitioner Francis A. Speer from the Crane Co. was received in twelve equal monthly installments of \$4,583.33 per month. For the period January 1, 1970 through September 30, 1970 Mr. Speer received \$41,250.00 and for the remaining three months of 1970 compensation received amounted to \$13,750.00.

6. During the period January 1, 1970 to September 30, 1970, petitioner Francis A. Speer worked a total of 180 days, of which 97 days were spent outside New York State and 83 days were spent within the State.

#### CONCLUSIONS OF LAW

A. That petitioner Francis A. Speer received the amount of \$13,750.00 as compensation for personal services rendered wholly without New York State; accordingly, said compensation is not includable in his New York adjusted gross income within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.4(b) (Hayes v. State Tax Commission, 61 A.D.2d 62).

B. That petitioner Francis A. Speer received compensation of \$41,250.00 for personal services rendered within and without New York State during the period January 1, 1970 to September 30, 1970. Said compensation is allocated to New York based on a percentage determined by placing the number of days worked in New York (83) over the total number of working days (180). Petitioners'

total New York income for 1970 is decreased from a reported \$20,570.00 to \$19,021.00 ( $83/180 \times \$41,250.00$ ).

C. That the issue of laches is rendered moot in light of Conclusions of Law "A" and "B", supra.

D. That the petition of Francis A. Speer and Kathleen M. Speer is granted and the Notice of Deficiency issued April 13, 1973 is cancelled. That the Audit Division is directed to recompute petitioners' 1970 personal income tax liability based on a total New York income of \$19,021.00 and refund to petitioners any resulting overpayment.

DATED: Albany, New York

SEP 08 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER