

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Harold M. & Anne G. Altshul :  
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. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Harold M. & Anne G. Altshul, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

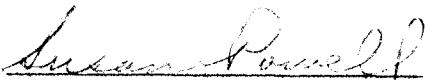
Harold M. & Anne G. Altshul  
176 Water St.  
Stonington, CT 06378

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  
28th day of September, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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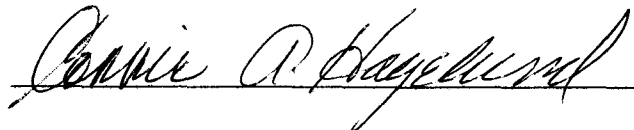
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon I. W. Brams the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

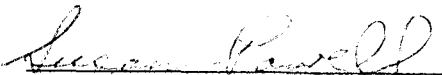
I. W. Brams  
Herman J. Dobkin & Co., CPA's  
200 Madison Ave.  
New York, NY 10016

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  
28th day of September, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

September 28, 1983

Harold M. & Anne G. Altshul  
176 Water St.  
Stonington, CT 06378

Dear Mr. & Mrs. Altshul:

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 Law 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  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
I. W. Brams  
Herman J. Dobkin & Co., CPA's  
200 Madison Ave.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition                  | : |          |
|  | : |          |
| of   | : |          |
|  | : |          |
| HAROLD M. ALTSHUL and ANNE G. ALTSHUL          | : | 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, Harold M. Altshul and Anne G. Altshul, 176 Water Street, Stonington, Connecticut 06378, 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. 22138).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 25, 1981 at 11:15 A.M. Petitioners appeared by Herman J. Dobkin, CPA and I. W. Brams, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

#### ISSUE

Whether the days which petitioner Harold Altshul worked at his home in Connecticut in 1976 constituted days worked outside New York State for purposes of income allocation.

#### FINDINGS OF FACT

1. Petitioners, Harold Altshul and Anne Altshul, filed a joint New York State Income Tax Nonresident Return for the year 1976. On this return, petitioners allocated Harold Altshul's income on the basis of the number of days which Harold Althsul worked in New York State over the total number of days worked in the year.

2. On November 16, 1977, the Audit Division issued a Statement of Audit Changes which revised petitioners' allocation of New York income on the ground that the time spent in petitioners' home was not a proper basis to allocate wage and salary income. Accordingly, on March 24, 1978, the Audit Division issued a Notice of Deficiency for the year 1976 of \$7,694.25, plus interest of \$612.80, for a total of \$8,307.05.

3. In the beginning of 1975, petitioner was the president and chief executive officer of Ketchum & Company, Inc. ("Ketchum"). Ketchum is a publicly-owned company engaged in distributing wholesale drugs. Ketchum conducts business in New York, New Jersey, Ohio, Michigan and Connecticut.

4. In 1975, the Board of Directors of Ketchum became concerned with the need for establishing successor management because of Harold Altshul's advancing age. Therefore, Ketchum began a search to obtain younger management. In 1975, Mr. Robert Hoyt assumed the position of the president of Ketchum and Harold Altshul became the Chairman of the Board.

5. The Board of Directors believed that Harold Altshul's presence in the New York office would impede the new management's ability to develop their own skills in operating the company. This concern was reflected in a letter dated May 28, 1975 from Stuart Z. Krinsly, the General Counsel and member of the executive committee of Ketchum, to Harold Altshul. This letter stated, in pertinent part:

"For sometime past, we have discussed a very serious need for establishing successor management in the company. At the present time, the active management in the company has aged and there is no visible succession. Although the directors have raised the question on many, many occasions, we have not been successful. I believe that the situation is now urgent.

In view of the fact you are now over 65 years of age, it is important that you start the process of disassociating

yourself from the active management of the company and, except where necessary, confine yourself to the area of policy considerations.

In this connection, I believe that your daily presence in the New York office has an inhibiting effect upon the development of successor management and that anyone that you bring in with a view to becoming your successor would be seriously hampered by your continued presence.

In view of the geographic distribution of the company's activities, I believe that you can function as effectively in an office located some distance from the New York office and still, with visitations of no more than five to six days a month to New York, competently conduct the affairs of the corporation. There is no need for executives from Youngstown, Detroit, Cleveland, Columbus, Waterbury and Jersey to visit with you in New York. They can just as readily visit with you at other locations with little or no inconvenience.

I believe that it is time for you to consider the steps outlined above in order to insure the company's management succession and continued growth."

6. During 1975, in order to comply with Ketchum's desire that he not be present in the New York office on a daily basis, Harold Altshul disposed of his cooperative apartment in New York City. In 1976, Harold Altshul moved to Connecticut.

7. Harold Altshul set up an office in his home in Connecticut which was fully equipped for the various projects which he undertook on behalf of Ketchum. It had a separate telephone and Mr. Altshul was in constant communication both by making and receiving calls with all of Ketchum's offices. It was testified that he tried to keep on top of the operation from the office in his home. Other than the purported telephone, no other description of the home office was submitted.

8. Harold Altshul spent an average of five days a month in New York City after he moved to Connecticut. The time spent in the New York office was

devoted to policy-making conference, consultation and advice on a policy level, and attendance at board meetings.

9. Mr. Altshul was 65 years old in 1975 and he required surgery in May, 1975 which incapacitated him for several months.

10. It was alleged that Harold Altshul acted as a consultant to Ketchum. However, no documentary evidence was submitted to show that Mr. Altshul was acting as a consultant during the year at issue.

#### CONCLUSIONS OF LAW

A. That 20 NYCRR 131.16 provides, in part:

"If a nonresident employee (including corporate officers but excluding employees provided for in section 131.15) performs services for his employer both within and without the State, his income derived from New York sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within the State bears to the total number of working days employed both within and without the State.... However, 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."

B. That in determining whether the work performed at an out-of-state home was conducted for the necessity of the employer or the convenience of the employee one must examine whether the work could have been just as easily performed at the employer's New York office (Matter of Fass v. State Tax Comm., 68 A.D.2d 977, 978, aff'd 50 N.Y.2d 932).

C. That the work petitioner Harold Altshul performed at his home in Connecticut could have been just as easily performed at his employer's office in New York. Although the Board of Directors of Ketchum felt that Harold Altshul's presence in the New York office could impede the new managements' ability to develop their own skills in operating the company, it has not been shown that the office in Connecticut altered the situation, since Mr. Altshul

was in constant communication both by making and receiving calls with all of Ketchum's offices and since he tried to keep on top of the operations from the office in his home. Furthermore, there was no showing that some type of arrangement could not be made at the New York office, to implement the desired results of the Board of Directors (Matter of Wheeler v. State Tax Commission, 72 A.D.2d 878 and Matter of Colleary v. Tully, 69 A.D.2d 922).

D. That the petition of Harold M. Altshul and Anne G. Altshul is denied and the Notice of Deficiency dated March 24, 1978 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER