

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
John K. McKinley
and Helen H. McKinley : 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.

State of New York
County of Albany

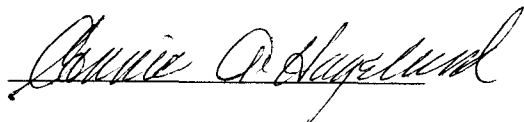
Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon John K. McKinley, and Helen H. McKinley the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

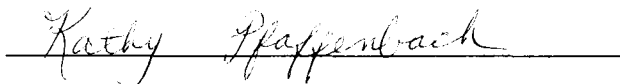
John K. McKinley
and Helen H. McKinley
5 Searles Rd.
Darien, CT 06820

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
24th day of January, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John K. McKinley :
and Helen H. McKinley :

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.

State of New York
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Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Douglas J. Green the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Douglas J. Green
Peat, Marwick, Mitchell & Co.
345 Park Ave.
New York, NY 10154

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
24th day of January, 1983.

Kathy Pfaffenbach

Connie A. Hegeland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

January 24, 1983

John K. McKinley
and Helen H. McKinley
5 Searles Rd.
Darien, CT 06820

Dear Mr. & Mrs. McKinley:

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
Douglas J. Green
Peat, Marwick, Mitchell & Co.
345 Park Ave.
New York, NY 10154
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOHN K. MCKINLEY and HELEN H. MCKINLEY	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1976.	:	

Petitioners, John K. McKinley and Helen H. McKinley, 5 Searles Road, Darien, Connecticut 06820, 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. 30602).

A formal hearing was commenced before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 17, 1981 at 2:45 P.M. and continued to conclusion, at the same offices, on April 27, 1982 at 2:45 P.M. Petitioner appeared by Peat, Marwick, Mitchell & Co. (Douglas J. Green, C.P.A. and Eugene Schorr, C.P.A.). The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the days worked at home by petitioner are properly considered as days worked outside of New York State for purposes of income allocation.

FINDINGS OF FACT

1. Petitioners, John K. McKinley and Helen H. McKinley, timely filed a joint New York State Income Tax Nonresident Return for the year 1976. Thereafter, petitioners filed an amended joint New York State Income Tax Nonresident Return for 1976. On both returns, petitioners allocated Mr. McKinley's salary

income to sources within and without New York State based, in part, on days worked at his residence in Connecticut.

2. On February 12, 1980, petitioners executed a Consent Extending The Period of Assessment of Personal Income Tax and Unincorporated Business Tax for the year ending December 31, 1976 to on or before December 31, 1980.

3. On March 20, 1978, the Audit Division issued a Statement of Audit Changes, which asserted a deficiency of personal income tax based upon the disallowance by the Audit Division of the claim that twenty-eight days worked at home constituted days worked outside of New York State for purposes of allocating wages. Accordingly, on April 11, 1980 the Audit Division issued a Notice of Deficiency asserting personal income tax due in the amount of \$4,014.01 plus interest. The amount of interest asserted to be due in the Notice of Deficiency was \$9,499.74. However, it appears that there was an error in computing the interest.

4. In 1976, Mr. McKinley was the president of Texaco, Inc. ("Texaco"). During the period in issue, Texaco operated in 130 countries or territories. Many countries in which Texaco operated did not utilize Saturdays or Sundays as non-working days. In addition, the differing time zones in which Texaco operated did not correspond to "regular" office hours in New York. As president of Texaco, Mr. McKinley had to be available to respond to worldwide decisions or emergencies every day of the week on a twenty-four hour a day basis. Mr. McKinley's attention would be called to such events as environmental disasters, fires, storms, accidents involving employees, enactment of government regulations, riots, and insurrections.

5. The necessity of Mr. McKinley's availability on a continuous basis was recognized by the Executive Committee of the Board of Directors of Texaco at its meeting on September 9, 1971. The minutes of this meeting state, in part:

"On September 9, 1971, the Committee 'directed that the Chief Executive Office of the Company (defined for this purpose as - - - and the President) shall, - - - have readily available to them at all times wherever they may work and reside adequate ground and air transportation facilities and alternative communication systems and such files and records as may be reasonably necessary for them to conduct the affairs of the Company and adequately to cope with emergencies that may arise.'"

6. In order to be able to respond to such emergencies, the Board of Directors determined by resolution that Mr. McKinley was to have access to a worldwide communications capability on a "twenty-four hour a day basis" every day of the week. Therefore, Texaco provided such a capability at Texaco's headquarters in Harrison, New York. In addition, Texaco equipped Mr. McKinley's home with a base station with two radio channels assigned to Texaco. These radios were capable of obtaining remote access to telephone lines in the event local telephone service was interrupted. Mr. McKinley's personal automobile, which was provided by Texaco, had a similar communications capability. Additional communications equipment in petitioner's home included a telephone recorder, two telephone lines, and twenty-four hour a day dictation capability.

CONCLUSIONS OF LAW

A. That any allowance for the earnings of nonresident employees and officers for days worked outside of New York 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).

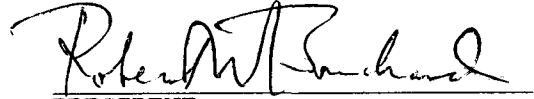
B. That the services performed by petitioner at his residence in Connecticut were so performed for petitioner's convenience and not the necessity of the employer. Therefore, the days worked by petitioner at his Connecticut residence may not be considered days worked outside of New York State within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

C. That the petition of John K. McKinley and Helen H. McKinley is denied and the personal income tax asserted on the Notice of Deficiency issued April 11, 1980 is sustained. However, the Audit Division is directed to recompute the amount of interest that is lawfully owing.

DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION



ACTING PRESIDENT



COMMISSIONER



COMMISSIONER