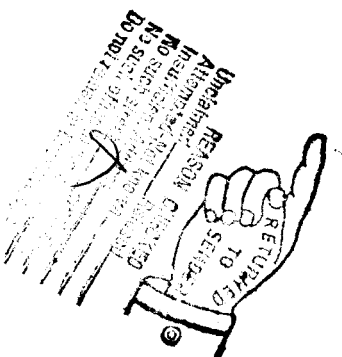


TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



Peter & Louisa Nadir
498 Kings George Rd.
Middletown, NJ 07946

CERTIFIED

P 481 207 649

MAIL

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

June 24, 1983

Peter & Louisa Nadir
498 Kings George Rd.
Middletown, NJ 07946

Dear Mr. & Mrs. Nadir:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
PETER NADIR and LOUISA NADIR	:	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, Peter Nadir and Louisa Nadir, 498 King George Road, Millington, New Jersey 07946, 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. 18752).

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 November 9, 1979 at 9:15 A.M. Petitioner Peter Nadir appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

Whether petitioner Peter Nadir properly allocated his income to sources within and without New York State.

FINDINGS OF FACT

1. Petitioners, Peter Nadir and Louisa Nadir, timely filed a joint New York State Income Tax Nonresident Return for the year 1972 wherein Peter Nadir (hereinafter "petitioner") claimed an allocation of income to sources within and without New York State. Attached to said return was a statement submitted by petitioner detailing his basis for the claimed allocation. Said statement reads in pertinent part:

Unlike previous years, 1972 income is all from commissions which for about 30% were generated out of the state, predominantly in New Jersey at place of abode.

Total subject to NY State (70%) = \$39,929.95

2. On August 30, 1974, the Income Tax Bureau sent a letter to petitioner Peter Nadir requesting information as to the total amount of gross transactions in earning commissions, a list of the days worked outside New York State showing the exact location and the amount of gross transactions for each day, and a list of the days worked at home showing the gross transactions for each day. Petitioner responded to said inquiry by submitting a worksheet which showed days worked outside New York State and the gross transactions for each day, excluding days at home. The sales attributable to days spent outside New York State were \$923,588.16. Another set of worksheets were also submitted which showed days worked at home and the gross transactions for each day. Petitioner stated in his letter that total sales for the year amounted to \$25,004,419.09.

3. On November 27, 1974, the Audit Division issued a Statement of Audit Changes to petitioners wherein it adjusted petitioner's allocation through use of a method whereby the allocation percentage was determined by a ratio, the numerator of which represented gross sales within New York State, and the denominator of which represented gross sales within and without New York State. Said percentage was then applied to the wages and "other compensation" shown on Peter Nadir's withholding statement in determining New York commissions. In computing such allocation, the Audit Division did not recognize sales made at petitioner's home as being made outside New York State and explained in said statement that "An allocation of income based on sales activities carried on at the personal residence of a nonresident is not recognized as a proper basis for

determining the amount of income earned outside New York State." Petitioners properly executed a consent extending the period of limitation on assessment of tax, on their 1972 return, to April 15, 1977. Accordingly, on February 28, 1977, a Notice of Deficiency was issued against petitioners asserting additional personal income tax of \$2,000.61, plus interest of \$581.26, for a total due of \$2,581.87.

4. During 1972, petitioner was a registered representative selling securities for Walston & Co., Inc., 77 Water Street, New York City. His territory was unlimited, and he was compensated on a variable commission basis. His net commissions were reported on his wage and tax statement.

5. Petitioner, although attached to the New York office, placed his orders through the office of Walston & Co., Inc. nearest the location where each business transaction occurred. He testified that he associated himself with the New York office solely for prestige purposes.

6. The commission which petitioner received was determined through a formula which varied from transaction to transaction, since it was determined by the nature of the securities involved. Some transactions produced no commissions. Accordingly, petitioner argued that an allocation based on gross sales is inequitable and inaccurate.

7. Petitioner's method of obtaining sales, which he defined as "super soft selling", was to use an approach where he would engage in friendships that eventually would lead to the prospective, unaware customer asking him for security advice. For this purpose, petitioner used his home to entertain extensively.

8. The vast majority of orders received by petitioner at his New Jersey residence were phoned into Walston & Co.'s Newark, New Jersey office.

CONCLUSIONS OF LAW

A. That the method used by petitioners to allocate Peter Nadir's wages and other compensation received from Walston & Co., Inc. is improper since the record does not support the percentages arrived at in Finding of Fact "1", supra.

B. That commissions for sales made for services performed by petitioner Peter Nadir depended directly upon the volume of business transacted by him and is supported in the record by the worksheets submitted by petitioner (see Finding of Fact "2" supra). Therefore, the method used by the Audit Division in determining New York Commission income is proper within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.15.

C. That the petition of Peter Nadir and Louisa Nadir is denied and the Notice of Deficiency issued on February 28, 1977 is sustained.

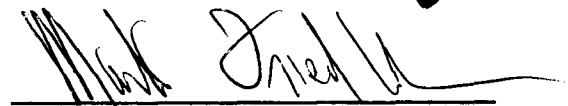
DATED: Albany, New York

STATE TAX COMMISSION

JUN 24 1983


PRESIDENT


COMMISSIONER


COMMISSIONER