

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Nathan M. and Patricia Shippee : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Refund :
of New York State Personal Income Tax under Article :
22 of the Tax Law and New York City Nonresident :
Earnings Tax under Chapter 46, Title U of the :
Administrative Code of the City of New York for :
the Year 1977.

State of New York
County of Albany

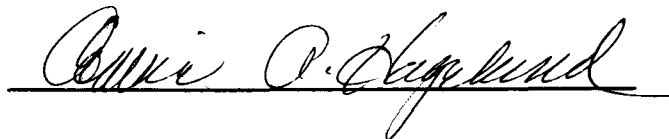
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Nathan M. and Patricia Shippee, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nathan M. and Patricia Shippee
Sandpiper Point Rd.
Old Lyme, CT 06371

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
15th day of July, 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
Nathan M. and Patricia Shippee :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Refund :
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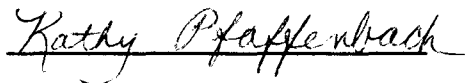
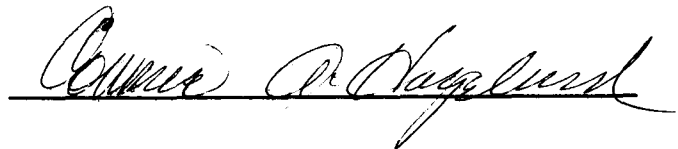
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Eli Robins the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eli Robins
310 Madison Avenue
New York, NY 10017

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
15th day of July, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 15, 1983

Nathan M. and Patricia Shippee
Sandpiper Point Rd.
Old Lyme, CT 06371

Dear Mr. & Mrs. Shippee:

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 & 1312 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
Eli Robins
310 Madison Avenue
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
NATHAN M. SHIPPEE and PATRICIA SHIPPEE : DECISION
for Redetermination of a Deficiency or for :
Refund of New York State Personal Income Tax :
under Article 22 of the Tax Law and New York :
City Nonresident Earnings Tax under Chapter 46, :
Title U of the Administrative Code of the City :
of New York for the Year 1977.

Petitioners, Nathan M. Shippee and Patricia Shippee, Sandpiper Point Road, Old Lyme, Connecticut 06371, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1977 (File No. 30671).

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 16, 1982 at 1:15 P.M. Petitioner Nathan M. Shippee appeared with Eli Robins, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether days worked at home by nonresident petitioners, Nathan M. Shippee and Patricia Shippee, may properly constitute days worked without New York State for income allocation purposes.

FINDINGS OF FACT

1. Petitioners, Nathan M. Shippee and Patricia Shippee, timely filed a combined New York State Income Tax Nonresident Return (with New York City Nonresident Earnings Tax) for the year 1977 whereon they each allocated their

respective salary income to sources within and without New York State as follows:

Nathan M. Shippee	$\frac{45}{251}$	x	\$107,815.00	=	\$19,329.00 (Allocated to New York State)
Patricia Shippee	$\frac{114}{251}$	x	\$ 33,996.00	=	\$15,440.00 (Allocated to New York State)

The numerators in the above allocation computations represent the number of days claimed as having been worked in New York State. The denominators represent the total days claimed to have been worked during 1977. The salary incomes to be allocated of \$107,815.00 for Mr. Shippee and \$33,996.00 for Mrs. Shippee were as reported on petitioners' wage and tax statements issued by The Prudential Group, Inc., 90 Broad Street, New York, New York 10004. Petitioners' allocations claimed for New York City purposes were identical to those claimed for State purposes.

2. On October 23, 1978, at the request of the Audit Division, each petitioner submitted a schedule of days worked without New York during 1977. Such schedules were divided into four columns; Dates, Away Location, At Home and Duties. The "At Home" column listed "Connecticut" for each date petitioners worked at home. Duties listed for days worked at home were described as either "Reports" or "Corporate Planning". Petitioner Nathan M. Shippee reported fifty-nine (59) days worked at home. Petitioner Patricia Shippee reported sixty-five (65) days worked at home. The vast majority of days claimed to have been worked at home consisted of Saturdays and Sundays.

3. On February 5, 1979, the Audit Division issued a Statement of Audit Changes to petitioners wherein it stated:

"Days worked at home are not a proper basis for allocation of income by a nonresident. Any allowance claimed for days worked outside New York State must be based upon performance of services which, because of the necessity of the employer, obligate the employee to out of State duties in the service

of his employer. Such duties are those which, by their very nature, cannot be performed in New York.

For purposes of the allocation formula, normal work days spent at home are considered to be days worked in New York and days spent at home which are not normal work days are considered to be nonworking days."

Pursuant to the above, petitioners allocation schedules were recomputed as follows:

Nathan M. Shippee	$\frac{145}{271}$	x	\$107,815.00	=	\$57,687.00	Allocated to New York State and New York City
Patricia Shippee	$\frac{214}{265}$	x	\$ 33,996.00	=	\$27,453.00	Allocated to New York State and New York City

Additionally, the cost of life insurance premiums paid by petitioners' employer was allocated to New York State and City in the same manner as their salaries.

4. Pursuant to the Statement of Audit Changes, petitioners were given credit for New York State withholding taxes which they failed to claim on their return. In computing the deficiency at issue herein, the application of said withholding taxes and payments previously made with their return, against their respective adjusted liabilities, resulted in a net balance of tax due from Nathan M. Shippee of \$1,604.39, while an overpayment of \$429.54 was computed for Patricia Shippee. Accordingly, a Notice of Deficiency was issued against Nathan M. Shippee (hereinafter petitioner) on April 11, 1980 asserting additional personal income tax of \$1,174.85, plus interest of \$196.64, for a total due of \$1,371.49.

5. Petitioner was the founder of The Prudential Group, Inc., a venture capital organization integrating several diversified subsidiary operating companies located in various states. During the year at issue petitioner was

President and Chairman of the Board of the Prudential Group, Inc. as well as all of its subsidiaries. Mrs. Shippee was a Vice President and Secretary. Although The Prudential Group, Inc. was a public company, the Shippees' owned a controlling interest.

6. The Prudential Group, Inc. maintained its administrative office at 90 Broad Street, New York City.

7. Petitioner's testimony on direct examination consisted of reading prepared written answers to specific questions posed by his representative.

8. Petitioner contended that The Prudential Group, Inc. was not based in New York. He claimed that it is a Delaware corporation that only maintains a presence in New York and that he was paid through New York only because the payroll accounts were maintained there. During 1977 The Prudential Group Inc.'s corporate headquarters was located in Houston, Texas.

9. Petitioner testified that The Prudential Group, Inc. was originated in Greenwich, Connecticut in 1959 and that it has maintained an office, presence and business activity in Connecticut ever since its formation. The Connecticut office, he testified, was fully staffed with permanent employees and was located at an address different from that of his personal residence.

10. On December 7, 1981 petitioner's representative sent a letter to the Tax Appeals Bureau wherein he stated that:

"Enclosed please find a copy of the Connecticut franchise tax return filed by The Prudential Group, Inc. and its subsidiary The Connecticut Exploration Corporation showing an apportionment to Connecticut for the calendar year 1976.

Based upon our discussion at our meeting of November 19th in New York, I trust this proves the fact that the employer corporation was indeed in business in the State of Connecticut."

11. Review of the Connecticut franchise tax return of The Prudential Group, Inc. for the fiscal year June 1, 1976 to May 31, 1977 disclosed the following:

- (a) The Prudential Group, Inc. was organized under the laws of Delaware on December 21, 1965 with business operations commencing in Connecticut, on August 9, 1966.
- (b) The corporation maintained no place of business in Connecticut during said fiscal year.
- (c) The Prudential Group, Inc.'s principal place of business was 90 Broad Street, New York, New York 10004.
- (d) The percentage of net income apportioned to Connecticut was .00000067%, yielding a net income apportioned to Connecticut of one dollar (\$1.00).

12. Review of the Connecticut franchise tax return of the Connecticut Exploration Corporation shows that during fiscal year June 1, 1976 to May 31, 1977, said corporation was "inactive".

13. Petitioner testified that he did not maintain an office at his personal residence and did not conduct business meetings there. He claimed that the work he did in Connecticut was performed at the corporation's Connecticut office and not at his home. He further testified that the Column "At Home", as used in his schedule of days worked without New York (Finding of Fact "2", supra), meant at the corporation's Connecticut office rather than at his personal residence.

14. Petitioner's testimony rendered with respect to the use of his personal residence is in direct contradiction to the following:

a - The petition - Petitioner stated in his petition that:

"The taxpayer herein worked for the employer at many of these locations (offices in various states). One such location was at the home of the petitioner." And that "the fact that one of many offices of the corporation was at the

home (of) the taxpayer, in no way confers any taxing jurisdiction upon the State of New York."

b - Petitioner's letter of October 11, 1978 - In such letter, which was annexed to the schedules of days worked without New York, petitioners stated that:

"Since the Shippee's are the "parents" of the Company, and are the controlling shareholders, they frequently employ the use of their residence in Connecticut for business meetings, and for corporate planning."

15. No testimony was rendered with respect to the allocation claimed by Patricia Shippee.

CONCLUSIONS OF LAW

A. That petitioner's testimony rendered during the hearing held herein is deemed incredible and accordingly is given no weight.

B. That with respect to the earnings of nonresident employees and officers, 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 within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16 (see also Matter of Oakley S. Evans v. State Tax Commission, 82 A.D.2d 1010).

C. That petitioners have failed to sustain their burden of proof required pursuant to section 689(e) of the Tax Law and section U46-39.0(e) of Chapter 46, Title U of the Administrative Code of the City of New York, to show that the days worked at their home in Connecticut were so worked there by reason of the necessity of their employer rather than for their own convenience.

D. That the petition of Nathan M. Shippee and Patricia Shippee is denied and the Notice of Deficiency dated April 11, 1980 is hereby sustained together with such additional interest as may be lawfully owing.

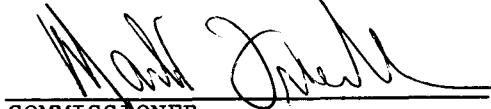
DATED: Albany, New York

STATE TAX COMMISSION

JUL 15 1983


PRESIDENT


COMMISSIONER


COMMISSIONER