

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Louis & Celia Cohen : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Year :  
1972.

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State of New York }  
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Arthur Rosenthal, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

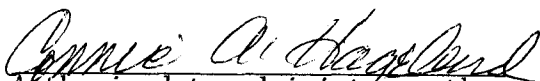
Arthur Rosenthal  
205 Dunn St.  
Piscataway, NJ 08854

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
9th day of March, 1984.



  
Annie A. Haglund  
Authorized to administer oaths  
pursuant to Tax Law Section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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State of New York }  
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Louis & Celia Cohen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Louis & Celia Cohen  
400 Diplomat Pky.  
Hallandale, FL 33009

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
9th day of March, 1984.



  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

March 9, 1984

Louis & Celia Cohen  
400 Diplomat Pky.  
Hallandale, FL 33009

Dear Mr. & Mrs. Cohen:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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  
Arthur Rosenthal  
205 Dunn St.  
Piscataway, NJ 08854  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LOUIS COHEN and CELIA COHEN	:	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, Louis Cohen and Celia Cohen, 400 Diplomat Parkway, Hallandale, Florida 33009, 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. 13653).

On September 22, 1980, petitioner Louis Cohen informed the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file. After due consideration of the record, the Commission renders the following decision.

ISSUE

Whether salary income of \$23,800.00 is subject to the personal income tax under Article 22 of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Louis Cohen and Celia Cohen, timely filed a joint New York State Income Tax Nonresident Return for the year 1972, on which \$23,800.00 was reported as nontaxable salary income for New York State personal income tax purposes (Article 22 of the Tax Law).

2. On December 22, 1975, the Income Tax Bureau issued a Notice of Deficiency for \$1,938.61, plus interest of \$390.76 for the year 1972, along with an

explanatory Statement of Audit Changes, on which salary income of \$23,800.00 was held taxable to a nonresident pursuant to Article 22 of the Tax Law.

3. Petitioner Louis Cohen was a resident of New York State, and the principal officer and stockholder of the Harvey Lumber Corporation in Brooklyn, New York. On December 17, 1970, petitioners purchased a condominium in Hallandale, Florida.

4. In February 1971, petitioners, Louis Cohen and Celia Cohen, sold their home in New York State, moved to Florida and applied for a Florida Homestead Exemption. On February 16, 1971, a Declaration of Domicile and Citizenship was executed by petitioners and recorded on February 17, 1971 in Broward County, Florida. Accordingly, petitioners opened bank accounts, obtained a driver's license and registered their automobile in the State of Florida.

5. During the year 1972, petitioners' son managed and operated the Harvey Lumber Corporation with directions and instructions from petitioner Louis Cohen, communicated through correspondence and telephone calls. This arrangement continued until sometime during the year 1972, when petitioner Louis Cohen returned to New York State for a period of five days for the purpose of liquidating the Harvey Lumber Corporation.

6. During the period in 1972 in which Harvey Lumber Corporation was active, petitioner Louis Cohen worked a total of 180 days and received salary income of \$23,800.00. Petitioner maintained that the salary income represented compensation for services rendered by telephone and mail from his home in Florida. In support of his contentions, petitioner submitted, among an assortment of other evidence, sworn affidavits from himself and from the accountant of the Harvey Lumber Corporation, who was a Certified Public Accountant, licensed to practice in New York State.

CONCLUSIONS OF LAW

A. That petitioners, Louis Cohen and Celia Cohen, have failed to sustain the burden of proof in establishing that the salary income of \$23,800.00 was compensation for personal services rendered wholly without New York State as required by section 689(e) of the Tax Law.

B. That petitioner Louis Cohen worked a total of 180 days for Harvey Lumber Corporation during 1972 and five of these days were worked within the State of New York. Therefore, his salary income of \$23,800.00 must be allocated to sources within and without New York State in accordance with 20 NYCRR 131.16.


C. That the petition of Louis Cohen and Celia Cohen is granted to the extent that the salary income of \$23,800.00 is allocated to New York State by a ratio of 5/180.

D. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued December 22, 1975, and that except as so granted, the petition is in all other respects denied.

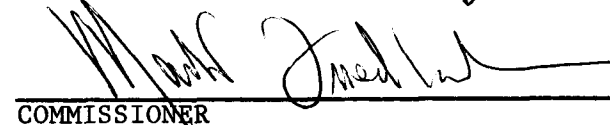
DATED: Albany, New York

STATE TAX COMMISSION

MAR 09 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER