

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Richard F. & Diane L. Horowitz :

AFFIDAVIT OF MAILING

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 1980. :

State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he/she served the within notice of Decision by certified mail upon Richard F. & Diane L. Horowitz, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard F. & Diane L. Horowitz  
15 Emerson Terrace  
Bloomfield, NJ 07003

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  
18th day of February, 1986.

Doris E. Steinhardt

Jean Conley  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Richard F. & Diane L. Horowitz :

AFFIDAVIT OF MAILING

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 1980. :  
\_\_\_\_\_

State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he served the within notice of Decision by certified mail upon Richard F. Horowitz, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard F. Horowitz  
292 Madison Ave.  
New York, NY 10017

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  
18th day of February, 1986.

Doris E. Steinhardt

Jan C. [Signature]  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 18, 1986

Richard F. & Diane L. Horowitz  
15 Emerson Terrace  
Bloomfield, NJ 07003

Dear Mr. & Mrs. Horowitz:

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 and Chapter 46, Title U of the Administrative Code of the City of New York, 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  
Richard F. Horowitz  
292 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
RICHARD F. & DIANE L. HOROWITZ	:	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 1980.	:	

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Petitioners, Richard F. & Diane L. Horowitz, 15 Emerson Terrace, Bloomfield, New Jersey 07003, 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 1980 (File No. 47237).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1985 at 2:45 P.M., with all briefs to be submitted by December 31, 1985. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

#### ISSUE

Whether days worked at home by Richard F. Horowitz during the year 1980 are properly considered days worked outside New York State for income allocation purposes.

FINDINGS OF FACT

1. Petitioners, Richard F. and Diane L. Horowitz, residents of New Jersey timely filed a New York State Income Tax Nonresident Return with City of New York Nonresident Earnings Tax for 1980.

2. During the year in issue, Mr. Horowitz was an attorney working in a New York City professional law corporation. Petitioners reported income in the amount of \$71,250.00 from Mr. Horowitz's employment. Mr. Horowitz's salary was allocated to New York sources based on a percentage which was determined by placing the number of days worked within New York (150) over the total number of days worked in the year (237). This resulted in an allocation of \$45,095.00 to New York State.

3. On July 28, 1983, the Audit Division issued to petitioners a Notice of Deficiency asserting that for the year 1980 additional personal income tax was due in the amount of \$2,773.07 plus interest. A previously issued Statement of Audit Changes explained that petitioners' total allocation of wages had been disallowed as unsubstantiated.

4. In accordance with information submitted by petitioners after the Notice of Deficiency was issued, the Audit Division adjusted the allocation of income to New York State by allowing an allocation for twenty days worked outside of New York and away from home; however, sixty-seven days which Mr. Horowitz claimed to have worked at his New Jersey home on weekends were excluded.

5. In 1980, Mr. Horowitz's employer was a commercial law firm with clients throughout the country and abroad. Attorneys in the firm were expected to be available to receive business calls and to respond to matters presented to them by phone at odd hours in the evening and on Saturdays, Sundays and holidays. Furthermore, as a matter of office policy, attorneys with the corporation

routinely worked at home on weekends. Although Mr. Horowitz had a key to the New York office and could have worked there on weekends if he desired, his employer did not expect him to do so.

CONCLUSIONS OF LAW

A. That the sixty-seven days worked during 1980 at petitioner's home in New Jersey were worked there by reason of his own convenience and not for the necessity of his New York employer. Accordingly, those days are considered as days worked within New York State for income allocation purposes in accordance with the meaning and intent of section 632(c) of the Tax Law [see 20 NYCRR 131.18(a)].

B. That the services performed by petitioner at his out-of-state home could have easily been performed at his employer's office. As the Appellate Division stated in Burke v. Bragalini, 10 A.D.2d 654:

"It is understandable that many people -- living within and out of the State -- may on occasions find it more advantageous to work at home, either during the regular working hours or extra 'home work' after hours. Such a person living in the State is not entitled to special tax benefits, and...the commuter from outside the State is entitled to no such special benefits."

C. That the allocation of income to New York State should be adjusted to allow for twenty days worked outside of New York State in accordance with Finding of Fact "4", supra.

D. That the petition of Richard F. and Diane L. Horowitz is granted to the extent indicated in Conclusion of Law "C"; the Notice of Deficiency issued on July 28, 1983 shall be modified accordingly; and, in all other respects, the petition is denied.

DATED: Albany, New York

FEB 18 1986

STATE TAX COMMISSION

Rodman  
PRESIDENT

Francis R. Koehn  
COMMISSIONER

Mark J. Judd  
COMMISSIONER