

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Frank H. Burgmeier, Jr. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Years 1971 - 1973. :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon Frank H. Burgmeier, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

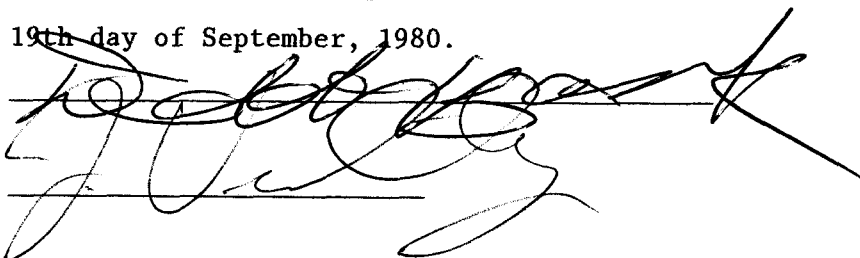
Frank H. Burgmeier, Jr.
7501 Woodstream Terrace
No. Syracuse, NY 13212

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

19th day of September, 1980.

A large, stylized handwritten signature in black ink, likely belonging to Jay Vredenburg, is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Frank H. Burgmeier, Jr. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Years 1971 - 1973. :

State of New York
County of Albany

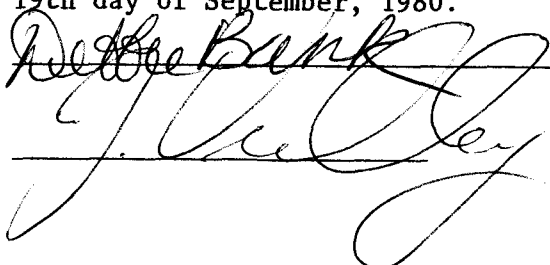
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon John R. Lero the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. John R. Lero
6033 E. Taft Rd.
No. Syracuse, NY 13212

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
19th day of September, 1980.


Notary Public

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

September 19, 1980

Frank H. Burgmeier, Jr.
7501 Woodstream Terrace
No. Syracuse, NY 13212

Dear Mr. Burgmeier:

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) 722 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
John R. Lero
6033 E. Taft Rd.
No. Syracuse, NY 13212
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
FRANK H. BURGMEIER, JR. : DECISION
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years 1971, :
1972 and 1973.

Petitioner, Frank H. Burgmeier, Jr., 7501 Woodstream Terrace, North Syracuse, New York 13212, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1971, 1972 and 1973 (File No. 13985).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 E. Washington Street, Syracuse, New York, on March 18, 1980 at 10:45 A.M. Petitioner Frank H. Burgmeier appeared with John R. Lero, PA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether all the business income received by the petitioner during the years in question is allocable to New York State for unincorporated business tax purposes.

FINDINGS OF FACT

1. Petitioner, Frank H. Burgmeier, Jr., filed joint New York State income tax resident returns with his wife for the tax years 1971, 1972 and 1973. He did not file New York State unincorporated business tax returns for 1971 and 1972. Petitioner did file a New York State Unincorporated Business Tax Return for 1973 on which he reported net business income for New York State of \$6,791.40.

2. On December 22, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioner imposing an unincorporated business tax upon petitioner's net business income for said years upon the grounds that his activities as a public relations counsel constituted the carrying on of an unincorporated business and the information on file indicated that Frank H. Burgmeier Company maintained no bona fide place of business outside New York State. In accordance with the Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency on December 22, 1975 in the amount of \$3,583.04 in unincorporated business tax, plus interest of \$688.77, for a total of \$4,272.81.

3. Petitioner, Frank H. Burgmeier, Jr., was a public relations counsel and during the years in question he did work for at least three principals, all located outside New York State. He was not constrained from working for other principals. The principals for whom petitioner provided his services did not withhold payroll taxes or make any other deductions.

4. Petitioner rendered his consulting services to Outdoor Power Equipment Institute, Inc. of Washington, D.C.; Power Tool Institute, Inc. of Evanston, Illinois; and Jacobsen Manufacturing Company of Racine, Wisconsin. These services were performed at the headquarter offices of the principals on a three to six days a month basis for each principal. The principals provided the petitioner with office space and stenographic services while working in their offices.

5. During the period under review, petitioner maintained an office at 700 Marcellus Street, Syracuse, New York. He paid no rent for any office space outside New York State, nor did he hold himself out to the public that he had a regular place of business outside of New York State. Petitioner's principals did not come to his New York office.

CONCLUSIONS OF LAW

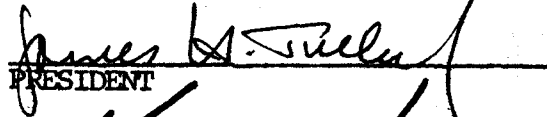
A. That even though petitioner, Frank H. Burgmeier, Jr., traveled outside New York State for the purpose of performing duties in connection with his business, and even though services were performed for or on behalf of principals located outside New York State, a regular place of business was not maintained by petitioner outside New York State; therefore, no allocation is allowed within the meaning and intent of section 707(a) of the Tax Law.

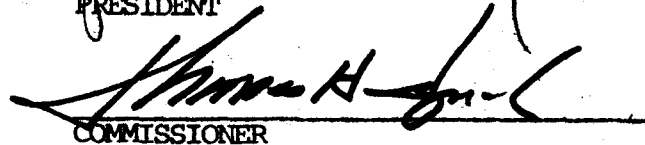
B. That the petition of Frank H. Burgmeier, Jr. is denied and the Notice of Deficiency issued December 22, 1975 is sustained, together with such additional interest as may be lawfully owing.

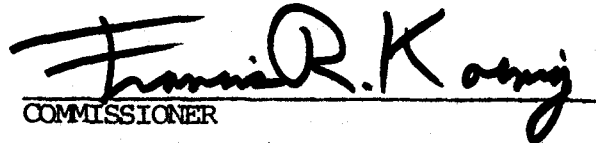
DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...

James H. ...
James H. ...
James H. ...

SEP 1 9 1980