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Income Tax Determinations
A-Z

BUREAU OF LAW

MEMORANDUM

Tomlinson, Victor R.

TO: Commissioners Murphy and [illegible]

FROM: M. Schapiro, Hearing Officer

SUBJECT: Victor R. Tomlinson
Application for revision or refund
of personal income taxes under
Article 22 of the Tax Law for the
year 1961

A hearing with reference to the above matter was held at 80 Centre Street, New York, New York on October 4, 1966. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue raised herein is whether or not the nonresident taxpayer is entitled to allocation of income within and without the State of New York for days worked on Saturdays and Sundays in his Connecticut home. An assessment was issued disallowing the taxpayer's allocation to out-of-State sources of income in the amount of 38 days of work performed by the taxpayer at his Connecticut home in 1961.

The taxpayer was employed by the Sinclair Refining Company at its office located in New York City. The taxpayer was a Vice President and general Counsel of the company. He was provided a private office and secretary. The office facilities were always available for his use including Saturdays and Sundays. As a rule, the taxpayer on weekdays arrived at his office [illegible] A.M., and left his office at 5:00 P.M. On occasions he remained in his office until later. It appears that days worked in his Connecticut home on Saturdays and Sundays were for periods of from four hours to twelve hours (page 20). His duties included the supervision of the Legal Department which employed approximately 45 attorneys and had a library staff of five members. His work at the New York office consisted of attending meetings, interpreting the law and preparing legal documents. The work performed at his Connecticut home was an extension of and was similar in nature to work performed at the office.

I am of the opinion that such work could have been performed at the New York office of the employer but was performed by the taxpayer at his home because of greater convenience. In accordance with the cases of [illegible] v. [illegible], 10 A D 2d 656 and [illegible] v. Murphy, 10 A D 2d 785, the income derived from such work constituted income from sources within the state. A proposed determination has therefore been prepared containing the adjustments as issued, with minor modification for the year 1961 because of clerical error.

Kindly return the files after disposition.

/s/ MARTIN SCHAPIRO
Hearing Officer

November 21, 1966
Enc.
FVD:lb

/s/ S. HECKELMAN
Approved
(November 28, 1966)

STATE OF NEW YORK

STATE TAX COMMISSION

- -

IN THE MATTER OF THE APPLICATION

OF

VICTOR R. TOMLINSON

FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEAR [illegible].

- -

The taxpayer herein having duly filed an application for revision or refund of personal income taxes imposed under Article 16 of the Tax Law for the year [illegible], and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York before Martin Schapiro, Hearing Officer, at which hearing the taxpayer was represented by Counsel and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, Victor R. Tomlinson, a resident of the State of Connecticut, was employed by Sinclair Refining Company as Vice President and general Counsel at its New York City office.

(2) That the taxpayer, Victor R. Tomlinson, on his [illegible] nonresident return claimed an allocation of [illegible] days worked outside of New York State which included [illegible] days for work performed at the taxpayer's Connecticut home; that an assessment was issued for the year [illegible] in the amount of $[illegible] (Assessment No. [illegible]) on the ground that [illegible] Saturdays and [illegible] Sundays worked at home are not considered as days on which services were rendered outside the State of New York.

(3) That the taxpayer at the company's New York City office was provided with his own office and a private secretary; that the office facilities including a large law library were available for his use at any time including Saturdays and Sundays; that the taxpayer's duties consisted of supervising the Law Department of his employer, attending conferences, interpreting the law and preparation of legal documents; that the Law Department consisted of approximately 40 attorneys and a law library staff of five persons; that the work performed by the taxpayer on Saturdays and Sundays at his home was an extension of and similar in nature to work performed by him at the office.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DETERMINES:

(A) That there was no necessary imposition required by the contract of employment, by the nature of the services performed and the [illegible] of judgment which necessitated the State of Connecticut or the home of the taxpayer as the locus for performance; that such services could have been performed at the New York office of the employer but were performed by the taxpayer at his home because of greater convenience.

(B) That the State Tax Commission properly disallowed any allocation of income outside of the State for services performed by the taxpayer at his Connecticut home during the years involved.

(C) That the assessment for additional taxes (Assessment No. [illegible]) for the year [illegible] is [illegible]; that such assessment is correct and does not include any other taxes or charges which are not lawfully due and owing.

DATED: Albany, New York this 6th day of Dec., [illegible].

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY

PRESIDENT

/s/ JAMES R. MACDUFF

COMMISSIONER