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Commissioners Murphy, Macduff & Conlon

Solomon Sien, Hearing Officer

Arthur Entis & Rose Entis, his wife

**Petition for Redetermination of Personal
Income Taxes under Article 22 of the Tax
Law for the year 1962.**

**A Formal hearing was held in the above matter at the New
York City office on December 7, 1965.**

**The issue involved herein is allocation of salary income
of the taxpayers, who filed a joint non-resident return.**

**Entis Food Products, Inc. is a domestic corporation organized
under the laws of the State of New York, engaged in the processing,
packaging and sale of smoked salmon, primarily to distributors maintain-
ing its principal place of business at 273 Metropolitan Avenue, Brooklyn,
N.Y. The taxpayer Arthur Entis and his brother, Harold, each own 49%
of the shares of stock in the corporation. The business was formerly
operated as a partnership under the name of Entis Food Products with
Harold Entis and his father Jacob (now deceased) as co-partners.**

**During the year 1962 Arthur Entis was employed by Entis
Food Products a portion of the year and by the corporation for the balance
thereof as salesman and Rose Entis was similarly employed as bookkeeper.
It is contended that Rose Entis performed all of her work in a room set
aside for that purpose in her home in New Jersey and that the residence
of the Taxpayers' home constituted the office of the employers for book-
keeping and billing purposes. Harold Entis and his wife Sylvia, who
are residents, were also employed by the corporation. Sylvia was a
general clerk and performed her work at home. Harold was inside man
supervising the operation of the factory. There is a small office in
the factory where the records were maintained and which Harold used to
perform clerical work (Min. of Hrg., p.12). It is claimed that Rose
Entis and Sylvia Entis were required to perform their work at home due
to lack of space at the plant of the employers in New York City.**

**The taxpayer Arthur Entis contends that in 1962 he performed
services on behalf of the corporation as a salesman both within and with-
out the State of New York and claims an allocation of 165 days spent
outside the State of New York. He kept no record of the days spent out-
side the State. This taxpayer failed to submit any records to substanti-
ate the claim to an allocation of days alleged to have been spent
by him outside the State performing work on behalf of his employers. He
has failed to establish that he was required or that it was necessary for
him to perform services outside the State.**

It does not appear that the corporation, on its franchise tax return claimed an allocation of income attributable to sources outside the State. The corporation is not listed in any New Jersey telephone directory (Min. Hrg., p.10) and does not deduct on its franchise tax return any expenses for the maintenance of an office in New Jersey (Min. Hrg., p.20).

I am of the opinion that the corporation did not maintain a bona fide place of business outside the State; that its business was carried on solely within the State in accordance with the definition of the term "business carried on within the state" in Article 41g of the Personal Income Tax Regulations.

I am of the opinion that the taxpayer Rose Entis, who did not appear to testify at the hearing, has failed to establish that she performed no services for her employers within the State of New York; that, even if she did perform all of her services at her home in New Jersey, she has failed to establish that she could not have performed such services at the place of business of her employers in the State of New York or that she was required to perform such services without the State; that such services, if performed by her at home without the State, were for her greater convenience in accordance with the decisions of Durkin v. Bragalin, 10 A.D. 2d 634 and Marshall v. Murphy 10 A.D. 2d 764.

For the reasons stated above, I recommend that the decision of the Tax Commission in this matter be substantially in the form submitted herewith.

MAR 28 1967

SOLOMON SIES
HEARING OFFICER

Approved

Approved

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION OF

ARTHUR RUTIS AND ROSE RUTIS, HIS WIFE

**FOR REDEMPTION OF A DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 22 OF THE TAX LAW
FOR THE YEAR 1962**

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Arthur and Rose Rutis having filed a petition for redemption of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1962 (File No. 248149822) and a hearing having been held before Solomon Sins, Hearing Officer of the State Tax Commission, at 30 Centre Street, New York, New York, on December 7, 1965, and Arthur Rutis having appeared in person, and the taxpayers having been represented by Oscar Goldberg, Esq., the matter having been duly examined and considered,

The State Tax Commission, hereby finds:

(1) That the taxpayers residing at Turtle Pond, Norristown, N.J. filed a joint New York State income tax nonresident return for the year 1962; that attached to said return were withholding tax statements indicating wages received by the taxpayer Rose Rutis from Rutis Food Products, 273 Metropolitan Avenue, Brooklyn, N.Y. in the amount of \$3,125.00 and Rutis Food Products, Inc., 273 Metropolitan Avenue, Brooklyn, N.Y. in the amount of \$1,250.00; that the aforementioned salary income of the taxpayer Rose Rutis was not included in said return upon the ground that her services were alleged to have been performed at her home in New Jersey and that her entire income was attributable to sources without the State of New York; that the taxpayer Arthur Rutis reported salary income received from Rutis Food Products in the amount of \$4,000.00 and from Rutis Food Products, Inc. in the amount of \$4,160.00 and claimed an allocation of earnings attributable to sources both within and without the State of New York; that said taxpayer reported salary income in the amount of \$3,264.00 attributable to the State of New York; that on September 24, 1964, the

Department of Taxation and Finance issued a statement of audit charges, disallowing the allocations claimed, recomputing the tax liability of the taxpayer so as to include their entire salary income attributable to New York and accordingly issued a notice of deficiency therefor.

(2) That at all of the times hereinafter mentioned Ratia Food Products, Inc. was and still is a domestic corporation organized under the laws of the State of New York engaged in the processing, packaging and sale, primarily to distributors of canned salmon maintaining its principal place of business at 273 Metropolitan Avenue, Brooklyn in the City and State of New York; that the corporation is the successor in interest of the same business, formerly operated as a partnership by Harry Ratia and his father Jacob (now deceased) under the name of Ratia Food Products; that there is an office on said premises which is used for the performance of clerical work; that the taxpayer Arthur Ratia and his brother Harold each owned 49% of the shares of stock in the aforesaid corporation; that the taxpayer Rose Ratia was treasurer of said corporation; that Ratia Food Products, Inc., on its New York State franchise tax return did not claim an allocation of income attributable to sources outside the State of New York; that the aforesaid corporation was not listed in any New Jersey telephone directory (Memo. of Hrg., p.10); that although it is contended that the corporation maintained an office in the home of the taxpayers in Harrison, N.J. during the year 1962, it did not deduct on its New York State franchise tax return any expense for the maintenance of such office (Memo. of Hrg., p.20); that during the year 1962 the corporation did not maintain a place of business outside the State of New York; that during the year 1962 the partnership of Ratia Food Products did not maintain a bona fide place of business outside the State of New York.

(3) That during the year 1962, the taxpayer Arthur Ratia was employed by Ratia Food Products and its successor in interest Ratia Food Products, Inc. as salesman; that although said taxpayer claimed that he spent 165 days outside the State on behalf of his employers, he testified that he kept no record of days worked outside the State; that said taxpayer has failed to submit any records to substantiate the claim to an allocation of days alleged to have been spent by him outside the State of New York

performing work on behalf of his employers; that said taxpayer has failed to establish that he was required to perform such services or did, in fact, perform such services outside the State of New York.

(4) That during the year 1962 the taxpayer Rose Entis was employed by Entis Feed Products and its successor in interest Entis Feed Products, Inc. as a bookkeeper; that such services were alleged to have been performed by said taxpayer at her home in New Jersey; that said taxpayer has failed to establish that the services performed by her were required to be performed outside the State of New York or that such services could not have been performed by her at the place of business of her employers located in New York City.

Based upon the foregoing findings and all of the evidence presented herein,

The State Tax Commission hereby

DECIDES:

(A) That during the year 1962, the residence of the taxpayers in New Jersey did not constitute a regular place of business of either Entis Feed Products or Entis Feed Products, Inc.; that during the year 1962 Entis Feed Products and its successor in interest Entis Feed Products, Inc. maintained a place of business solely within the State of New York.

(B) That there was no necessary ingredient required by the nature of the services performed by the taxpayer Rose Entis during the year 1962 which necessitated the State of New Jersey or the home of said taxpayer as locus of performance; that such services, if performed by the taxpayer Rose Entis at her home, were so performed for her greater convenience and that the income derived therefrom was attributable to services rendered within the State of New York in accordance with the provisions of Section 632(c) of the Tax Law.

(C) That the taxpayer Arthur Entis has failed to establish that during the year 1962 he was entitled to an allocation of earnings both within and without the State of New York; that the income derived by him from services rendered to his employers during the year 1962 was attributable to sources within the State of New York in accordance with

the provisions of Section 632(a) of the Tax Law.

(D) That, accordingly, the statement of audit charges and notice of deficiency for the year 1963 are correct; that the same do not include any tax or other charge which could not have been lawfully demanded; that the petition of the taxpayers for redetermination of a deficiency filed by them with respect thereto be and the same is hereby denied.

DATED: Albany, New York, the 1st day of May, 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

~~COMMISSIONER~~

/s/

JAMES R. MACDUFF

~~COMMISSIONER~~

/s/

WALTER MACLYN CONLON

~~COMMISSIONER~~