POOR

QUALITY

THE FOLLOWING

DOCUMENT (S)

ARE

FADED &BLURRED

L 9 (2-67)

BUREAU OF LAW
MEMORANDUM

Income Tax Determinations
A-Z
Stuntz, George H.

TO:

Commissioners Murphy, Macduff and Conlon

FROM:

Alfred Rubinstein, Hearing Officer

SUBJECT:

In the matter of the application of George H. Stuntz for revision or refund of personal income taxes under Article 22 of the Tax Law for the year 1960

In the matter of the petition of George H. Stuntz for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1961

A hearing with respect to the above matters was scheduled before me on February 15, 1967 at 80 Centre Street, New York, New York. The taxpayer, who now resides in Florida, advised that he could not attend, and submitted letters dated January 11, 1967 and February 13, 1967 in lieu of appearing.

The issue in both matters involved allocation of salary for days worked at home by a nonresident.

Taxpayer, a resident of New Jersey at the time, was employed as an executive by Interstate Department Stores, Inc. at 111-8th Avenue in New York City. He filed a nonresident return for 1960 on which he allocated his salary on the basis of 95 days worked without the State and 219 worked within the State. In computing such allocation he included Saturdays, Sundays and holidays worked at home, and also hours worked at home on days he spent at the office in New York. He submitted a schedule on which he showed 223 days worked in New York, and eight days worked exclusively without the State. On his 1961 nonresident return taxpayer used an allocation formula based on hours and computed 1,570 hours claimed to have been worked within the State out of a claimed total of 2,432 hours worked. No schedule was submitted to show the basis of the computation. The Income Tax Bureau recomputed taxpayer's New York income for 1960, disallowing any allocation without the State for work at home on Saturdays, Sundays, holidays and days on which he worked in New York, and assessed additional income tax in the sum of $667.45, allocating eight days as having been worked without the State.

Taxpayer was requested to furnish a statement setting forth the days worked within and without the State in 1961 in substantiation of the allocation made on his return for that year. On his failure to respond to the request a notice of deficiency was issued imposing additional income tax in the sum of $1,076.41 based on disallowance of any allocation without the State.

Taxpayer contends that the nature of his work as treasurer of the department store chain required that it be performed at home and that he was requested to work at home by the president of the corporation. However, in his letter dated April 17, 1962 he states, "It is true that this work can be done in New York, but it is also true that it can be done just as efficiently and accurately at home in New Jersey or for that matter, it can be done any place."

Article 16 regulations, 20 NYCRR 263.2 and proposed Article 22 regulation, 131.16 both provide for allocation of earnings of nonresident officers by inclusion of "that portion of the total compensation for services which the total number of working days within the State bears to the total number of working days employed both within and without the State of New York," and both provide for exclusion of nonworking days, Saturdays, Sundays, holidays, days of absence because of illness, injury, vacation or leave with or without pay. The allocation is to be computed on the basis of days worked in New York out of the total days worked, without a computation based on the days worked without the State. Consequently, a day on which work is performed both within and without the State is to be considered as worked within the State.

Taxpayer admits that the work performed by him at home on Saturdays, Sundays, holidays and days on which he worked in New York could have been performed as efficiently and accurately at his office. He however elected to work at home for his own convenience. His allocation by hours instead of by days, his inclusion of parts of the same days on which he worked both within and without the State in his schedule for 1960, and his failure to furnish a schedule of working days for 1961 are not in accord with the requirements of the regulations.

I am, therefore, of the opinion that the assessment for 1960 and notice of determination and statement of audit changes for 1961 should be sustained. The determination and the decision of the Tax Commission should be substantially in the form submitted herewith.

/s/ ALFRED RUBINSTEIN
Hearing Officer

AR:lb OK ms SA
Enc. 3-13-67

March 8, 1967

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

GEORGE E. [illegible]

FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR
THE YEAR 1960

George E. [illegible] having applied for revision or refund of personal income taxes under Article 22 of the Tax Law for the year 1960 (Assessment No. AB-[illegible]), and a notice having been duly served by mail on the taxpayer on January 3, 1967 setting down a hearing at 80 Centre Street, New York, New York on February 15, 1967 before Alfred [illegible], Hearing Officer of the State Tax Commission, and the taxpayer having responded by letters dated January 11, 1967 and February 11, 1967, in lieu of appearing at the hearing, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, a resident of New Jersey, filed a nonresident personal income tax return for 1960 reporting salary income of $35,4[illegible].30, allocating $24,77[illegible].24 to New York income and reporting a New York personal income tax of $1,4[illegible].[illegible]4; that taxpayer based his allocation on a formula which included days worked at his home in New Jersey on Saturdays, Sundays, holidays, and parts of days claimed worked at home on days he worked in New York; that by Assessment No. AB-[illegible], dated August 9, 1962 the Income Tax Bureau disallowed taxpayer's allocation of days worked at home on Saturdays, Sundays and parts of days worked at

home on days he worked in New York, recomputed taxpayer's income from New York sources at $34,344.32 and assessed additional personal income tax of $467.45; that taxpayer filed a timely application for revision or refund and demanded a hearing.

(2) That taxpayer, as executive of Interstate Department Stores, Inc., was employed at the corporation's offices at 111-8th Avenue, New York City; that his duties were those of director, treasurer and controller; that taxpayer has failed to substantiate his claim that he worked 314 days in 1960 and 95 of such days were spent without the State; that in arriving at such computation of working days, the taxpayer included Saturdays, Sundays, holidays and hours of certain days spent in his office in New York during which hours and days he claimed to have worked at home; that any work at home by the taxpayer on Saturdays, Sundays, holidays and on those days also spent at his office in New York was so performed at his home for the convenience of the taxpayer; that during 1960 taxpayer worked 251 days of which he worked 225 days within the State.

Based upon the foregoing findings, the State Tax Commission hereby

DETERMINES:

(A) That there was no ingredient in the nature of the services performed which required that they be performed at taxpayer's New Jersey home; that such services were performed there for the convenience of the taxpayer; that the income therefrom constituted income attributable to New York sources.

(B) That of the taxpayer's salary income of $[illegible] in [illegible], $[illegible] thereof was compensation for days worked within the State and allocable to New York.

(C) That accordingly, Assessment No. [illegible] imposing additional personal income taxes on the taxpayer is correct; that the amount set forth therein is due and owing, together with additional interest and other statutory charges; that the same does not include any tax or other charges which could not have been lawfully demanded, and that taxpayer's application for revision or refund with respect thereto be and the same is hereby denied.

DATED: Albany, New York on this 23rd day of March , 1967.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
President

/s/ JAMES R. MACDUFF
Commissioner

/s/ WALTER MACLYN CONLON
Commissioner

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

GEORGE H. STUMKE

FOR A REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1961

George H. Stumke having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1961 (File No. 1-5550516) and a notice having been duly served by mail on the taxpayer on January 5, 1967 setting down a hearing at 80 Centre Street, New York, New York on February 15, 1967 before Alfred Rubinstein, Hearing Officer of the State Tax Commission, and the taxpayer having responded by letters dated January 11, 1967 and February 13, 1967, in lieu of appearing at the hearing, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, a resident of New Jersey, filed a nonresident personal income tax return for 1961, reporting total salary income of $38,748.00, allocating $24,947.30 to New York income and reporting a New York tax of $1,255.25; that taxpayer based his allocation on a formula which allocated 1,570 working hours to New York out of 2,438 hours worked in the entire year; that on taxpayer's failure to furnish schedule listing the days worked in New York, days worked outside of New York and nonworking days, as requested, the Income Tax Bureau by notice of deficiency and statement of audit changes dated March 1, 1965 (File No. 1-5550516) disallowed taxpayer's allocation based on hours claimed

worked within and without the State, recomputed his New York income at $30,742.00 and imposed additional personal income taxes and interest in the sum of $1,261.80; that taxpayer filed a timely petition for redetermination or refund.

(2) That taxpayer, an executive of Interstate Department Stores, Inc., was employed at the corporation's offices at 111-8th Avenue, New York City; that his duties were those of director, treasurer and controller; that taxpayer has failed and declined to offer any substantiation of his claim that he worked any days without the State during 1961; that any work at home by the taxpayer was so performed by him for his convenience.

Based upon the foregoing findings, the State Tax Commission hereby

DECIDES:

(A) That there was no ingredient in the nature of the services performed which required that they be performed at taxpayer's New Jersey home; that such services were performed there for the convenience of the taxpayer; that the income therefrom constituted income attributable to New York sources.

(B) That the taxpayer's salary income of $30,742.00 in 1961 was compensation from New York sources.

(C) That accordingly, the notice of deficiency imposing additional personal income taxes on the taxpayer is correct; that the amount set forth therein is due and owing, together with additional interest and other statutory charges; that the sum does not include any tax or other charges which could not have been lawfully demanded, and that the taxpayer's petition for redetermination or refund with respect thereto be and the same is hereby denied.

DATED: Albany, New York the 23rd day of March , 1967.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ JAMES R.MACDUFF
COMMISSIONER

/s/ WALTER MACLYN CONLON
COMMISSIONER