

STATE OF NEW YORK  
STATE TAX COMMISSION

*Heath, Benf*  
*Personal Income*  
*Oct. 22*  
*1960-1961*

In the Matter of the Petition

of

BENJAMIN HEATH

BENJAMIN AND ALOISE HEATH

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s)) 1960, 1961,  
and 1962

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Linda Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21 day of December, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Benjamin and Aloise Heath (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Benjamin and Aloise Heath c/o The Connecticut Bank & Trust Company 1 Constitution Plaza Hartford, Connecticut 06115

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

21st day of December, 1970.

Edward Rock

Linda Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

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BENJAMIN AND ALOISE HEATH

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Notice of Decision (or Determination) by (certified) mail upon Benjamin and  
Aloise Heath (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: John E. Boice, Jr., Esq.  
800 17th Street, N.W.  
Washington, D.C. 20006

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

21st day of December, 1970

Eleanor Reek

Linda Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
BENJAMIN HEATH	:	
as to the year 1960, and of	:	DECISION
BENJAMIN AND ALOISE HEATH	:	
as to the years 1961 and 1962 for	:	
redeterminations of deficiencies or	:	
for refund of Personal Income Taxes	:	
assessed under Article 22 of the Tax	:	
Law for the said years.	:	

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The petitioners having filed petitions for redeterminations of deficiencies or for refund of personal income taxes assessed under Article 22 of the Tax Law for the years 1960, 1961 and 1962, and a hearing having been held at the offices of the State Tax Commission at 80 Centre Street, New York, New York, on November 23, 1965, before Frank M. DeBellis, Esq., Hearing Officer, and the petitioners having appeared by Reasoner, Davis & Vinson, Esqs. of Washington, D. C., (John E. Boice, Jr., Esq. of counsel) and the taxpayer Benjamin Heath having appeared in person and testified, and the record having been read, and due deliberation having been had, the State Tax Commission hereby finds that:

1. By a notice of deficiency dated October 10, 1962, the Department assessed additional personal income tax against the taxpayer, Benjamin Heath in the amount of \$3747.48 for the year 1960 on the grounds that an allocation of income claimed in the return was unsubstantiated. Thereafter there was a partial cancellation of such additional assessment to the extent of \$1059.05 following a conference.

By a notice of deficiency dated March 15, 1962, the Department assessed additional personal income taxes for 1961 in the amount

of \$867.74 with interest to the date of the notice in the amount of \$156.74 or a total of \$1024.48, and assessed additional personal income taxes for 1962 in the amount of \$488.05 with interest of \$51.24 or a total of \$539.29 as of the date of the notice.

The assessments resulted from the Department's disallowing a claimed right of allocation of income in these years.

2. In the return for the year 1960 of Benjamin Heath (and in the amended return for that year of Benjamin and Aloise Heath) the petitioner (Benjamin Heath) reported income of \$58,500 and used an allocation formula of 24.83% as New York income reporting \$14,525.55 as income earned in New York.

In their return for 1961, petitioners reported salary income of \$48,000 with a New York factor of 27.08% and a resultant figure of \$12,998.40 as salary earned in New York.

In their return for 1962, petitioners reported salary income of \$58,000 and employed a New York allocation factor of 24.38% with a resultant figure of \$14,140.40 for salary earned in New York.

Information required on the return forms at Schedule A-1 as to total working days in the year, the days worked outside the State, and the days worked inside the State, was not submitted.

3. The petitioners resided at West Hartford, Connecticut; and the petitioner Benjamin Heath was the vice-president of the Catawba Corporation and was stationed at its office at Hartford, Connecticut.

4. Catawba Corporation was a closed corporation engaged in rendering technical, administrative and bookkeeping services to oil companies engaged in the discovery and development of oil well sites in the country and in foreign countries.

It had a main office at New York, New York, and other offices

at Hartford, Connecticut, and other states and foreign addresses. It maintained a kind of private office for its president at Sharon, Connecticut.

Catawba Corporation had a substantial number of persons engaged as administrative and clerical staff at its New York and Hartford offices; and it observed a five-day work week, Mondays through Fridays for its personnel generally. At least eight holidays were observed by the Corporation, it is found.

5. In answer to questionnaires petitioner Benjamin Heath indicated that he had taken 2 days vacation in 1960, 5 days in 1961, and 9 1/2 days in 1962.

6. Petitioner Benjamin Heath submitted diaries in evidence at the hearing and extracts from them show that he spent his working days in the Hartford office, at the New York office and in travel.

His testimony indicated that usually in weeks when he was not travelling, he normally went to the New York office for several days. The diary resumes indicated that he left Hartford on Tuesday mornings journeying to New York by limousine and returning on Fridays; and that he treated the terminal days as 1/2 out-of-state days, so that in effect each such week included three New York days.

The resumes indicated that there were 98 1/2 New York days in 1960, 132 1/2 in 1961 and 116 in 1962, all of them working days as it is found.

7. Petitioner Benjamin Heath testified that he frequently spent time in the Hartford office on Saturdays, putting in from four to seven hours going over files, typing his own reports and sometimes making telephone calls. On such days none of his subordinate administrative staff was present nor was any clerical or stenographic

personnel present. Occasionally, another employee would be present. He claimed also that he went to his office occasionally on Sundays.

It was not claimed that any superior in the corporation directed him to work or to be present on such Saturdays or Sundays at the office, and it is so found.

Accordingly, the State Tax Commission hereby

DECIDES:

A. Pursuant to provision of Tax Law §632(c) which provides that if an occupation is carried on only partly within the State, as determined by regulations of the Tax Commission, the items of income derived from or connected with New York sources shall be determined by apportionment and allocation under such regulations and pursuant to regulation 131.4(b) (20 NYCRR 131.4(b)) which provides that where personal services are performed within and without New York, the portion of the compensation attributable to the services performed within New York shall be determined in accordance with Section 131.15 to 131.17 of regulations, and pursuant to regulation 131.16 (20 NYCRR 131.16) which provides in part that any allowance claimed for days worked outside of the State must be based upon the performance of services which of necessity, as distinguished from convenience, obligate the employee to out-of-state duties in the service of his employer, and that in making the allocation provided for in this section, no account is taken of non-working days including Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation, or leave with or without pay, it is held in the circumstances as found, that the employment-related duties performed by petitioner Benjamin Heath on Saturdays, Sundays and holidays in Hartford, Connecticut, or elsewhere, which were self-imposed, and not at the express direction of his superior or superiors, and which were not clearly required by any exigency of the business

did not constitute such days as other than non-working days or establish that the work was necessary within the intendment of the regulation.

In the case of a corporate official or other employee, duties performed voluntarily on days when the corporation is not open for business generally do not constitute such days working days or meet the requirement of necessity which requires not only an adequate business reason for the work's being done outside the state rather than within it, but as to an employee requires that the employee have worked on such a day at the direction of his superior or out of a clearly shown exigency of the business.

Solitary and essentially studious work by an executive, without staff, working voluntarily on Saturdays, Sundays, or holidays in an office not open for business is not to be recognized under the regulations as constituting such days as working days, in view of the regulation's overall purpose which is to preserve the true allocation ratio of the normal wage periods without distortion.

Business trips extending over Saturday, Sunday or holidays observed by a corporate employer as non-working days, do not necessarily or usually constitute such days as working days, and there would have to be a clear showing of bona fide substantial services to the employer necessarily scheduled and performed on such presumptively non-working days to permit such days to be counted as working days.

B. In the circumstances, Saturdays, Sundays and holidays are held non-working days and accordingly, the taxes are restated as follows:

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1960

Total Compensation	\$58,500.00
NY Income 98 1/2/254 x 58,500.00	22,686.02
Standard deduction	(1,000.00)
Balance	21,686.02
Exemptions claimed	(7,200.00)
NY Taxable Income	14,486.02

Tax on above	813.74
Less statutory credit	(25.00)
Balance	788.74
Less 10% deduction	78.87
Tax withheld	\$315.95
Less refunded	(134.83)
	181.12

Revised additional tax due

\$528.75

(Interest from 10/10/62 at 6% to 5/26/70 \$243.24  
(date of IT-202))

1961

Total Compensation	\$48,000.00
NY Income 132 1/2/250 x 48,000.00	25,440.00
Standard deduction	(1,000.00)
Balance	24,440.00
Exemption	(7,200.00)
NY Taxable Balance	17,240.00

Tax on above	\$1,084.00
Less statutory credit	(25.00)
Tax	1,059.00
(Tax computed \$126.94)	
Tax withheld	197.60
Less refunded	(70.66)
	(126.94)

Tax recomputed as of March 15, 1965

\$932.06

(Interest from 4/15/62 at 6% to 3/15/65) \$163.11  
( " " 3/15/65 to 5/26/70) \$290.62

1962

Total Compensation	\$58,000.00
NY Income 116/244 x 58,000.00	27,573.77
Less deduction \$12,398.16 prorated	(7,642.39)
Balance	19,931.38
Exemption	(7,200.00)
NY Taxable Balance	12,731.38

Tax on above	\$658.51
Less statutory credit	(25.00)
Tax	633.51
(Tax computed \$55.86)	
Tax withheld	\$250.15
Less refunded	(194.29)
	(55.86)

Tax recomputed, as of March 15, 1965

\$577.65



(Interest from 4/15/62 at 6% to 3/15/65)	\$66.43
( " " 3/15/65 to 6/26/70)	183.00

DATED: Albany, New York  
*December 16, 1970*

STATE TAX COMMISSION

*Norman Gillman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Manley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Kremer*  
\_\_\_\_\_  
COMMISSIONER