

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED J. AND MARY R. PANELLA

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(3) 22 of the
Tax Law for the (Year(s) 1961 & 1962 :

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

Panella
P.I.-1970

State of New York
County of Albany

Margaret Wood

, 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 23rd day of April , 1970 , she served the within

Notice of Decision (~~or Determination~~) by (certified) mail upon Alfred J.

and Mary R. Panella (~~representative of~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Alfred J. & Mary R. Panella
244 Moffett Road
Lake Bluff, Illinois

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

23rd day of April , 1970.

Jack Wright

Margaret Wood

STATE OF NEW YORK
STATE TAX COMMISSION

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|---------------------------------------|---|----------|
| In the Matter of the Application | : | |
| of | : | |
| ALFRED J. PANELLA | : | |
| and | : | |
| MARY R. PANELLA | : | |
| For a Redetermination of a Deficiency | : | DECISION |
| or for a Refund of Personal Income | : | ON |
| Taxes under Article 22 of the Tax Law | : | DEFAULT |
| for the years 1961 & 1962 | : | |

The petitioners having filed a petition for a redetermination of a deficiency or for a refund of personal income taxes under Article 22 of the Tax Law for the years 1961 and 1962 and a hearing having been duly scheduled at the offices of the Department of Taxation and Finance at 80 Centre Street, New York, New York, before Francis X. Boylan, Esq., Hearing Officer, and the Department having appeared by E. H. Best, Counsel, (Solomon Sies, Esq. of counsel) and there having been no appearance on behalf of the petitioner and the record having been duly examined and considered, the State Tax Commission finds that:

1. The failure of any appearance on behalf of the petitioner at the scheduled hearing constituted a default and was a voluntary submission to a decision to be based on the information in the file.

2. By a notice of deficiency, dated March 15, 1965, and an attached statement of audit changes, the State Tax Commission notified petitioner that it determined that there was a deficiency of personal income taxes for the year 1961 in the amount of \$68.26 together with interest in the amount of \$11.95, to a total of \$80.21 for the said year as of the date of the said notice.

By a notice of deficiency dated April 11, 1966, and an attached

statement of audit changes, the State Tax Commission notified petitioner that it determined that there was a deficiency of personal income taxes for the year 1961 in the amount of \$117.59, together with interest in the amount of \$21.10, to a total of \$138.69 for the said year as of the date of the said notice.

3. The additional assessments as to both years resulted from a denial of a claimed right to allocate income partly to Connecticut. Petitioner was employed as a district sales manager for Abbott Laboratories, Inc. of Chicago, Illinois. The employer had withheld New York income taxes on his earnings, and apparently without any allocation between New York and any other state.

4. Petitioner, who resides in Connecticut, in his petition for the year 1961 stated that he had made an allocation of his earnings on the premise that in a five-day work week, he worked four days "in the field" in New York and one day at home in Connecticut doing desk work there. The petition for 1962 did not set forth any grounds for objecting to the assessment, but presumably the petitioner's position as to that year was the same.

5. Except that petitioner's home was in Connecticut, no reason related to the needs of the business was advanced why the desk work claimed to have been done there could not have been done in New York; and, even if the work done in New York was truly "field" work as petitioner characterized it, there was no statement that office facilities were not provided or available to petitioner at New York, New York or elsewhere in New York.

Accordingly, the State Tax Commission hereby

DECIDES:

A. That the said determinations of deficiencies were not unlawful or incorrect.

An employee's occupation does not have a situs in the home of the employee outside the state simply by reason of the work's having

been done there in part; it is necessary to establish that the employer is conducting its business there, and that the employee's work is so performed outside the state out of necessity (rather than for convenience), that is to say, because of some adequate business reason making it necessary or considerably more advantageous to the employer's business that it be done at this site outside the state rather than within the state.

No claim was made that petitioner's supervisory duties proper were necessarily performed partly in Connecticut, or that the employer had an office in Connecticut other than at petitioner's home.

Petitioner did not establish that there was an adequate business-related reason for his performing part of his duties at his home.

B. That the said deficiencies set forth in paragraph 2 hereof are affirmed and constitute assessments of taxes as of the dates of the said notices thereof. The said assessments are subject to further interest at 6% per annum as provided by Tax Law (§§684 and 685).

DATED: Albany, New York
April 22, 1970

STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Bruce Manley
COMMISSIONER

William Korman
COMMISSIONER