

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CARROLL Y. & MARGARET G. BELKNAP

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) 1962 and 1963

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 24th day of January, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon CARROLL Y. & MARGARET G. BELKNAP (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Carroll Y. & Margaret G. Belknap
25 Club Road
Riverside, Connecticut

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

24th day of January, 1972.

Martha Funnaro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CARROLL Y. & MARGARET G. BELKNAP

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a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1962 and 1963;

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County of Albany

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444 Madison Avenue
New York, New York

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.

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Martha L. Lunn

Linda Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
January 24, 1972

Carroll Y. & Margaret G. Belknap
25 Club Road
Riverside, Connecticut

Dear Sir and Madam:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
690 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
CARROLL Y. & MARGARET G. BELKNAP
for a Redetermination of Deficiencies
or for Refund of Personal Income Taxes
under Article 22 of the Tax Law for the
years 1962 and 1963

DECISION

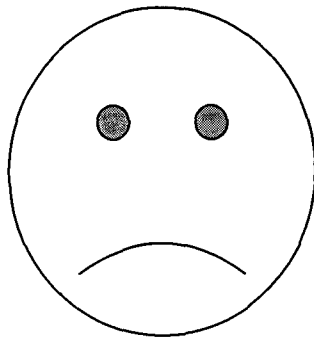
Taxpayers having filed a petition pursuant to Section 689 of the Tax Law for a redetermination of deficiencies of personal income taxes imposed under Article 22 of the Tax Law for the years 1962 and 1963; and a hearing thereon having been duly held before Nigel G. Wright, Hearing Officer, in the offices of the State Tax Commission in the city of New York on May 5, 1970, at 12:30 p.m., and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issue herein is the allocation of the salary of taxpayer, a non-resident, under Tax Law Section 632(c) and Regulation 20 NYCRR 131.16.
2. The deficiencies amount to \$2619.50 for 1962 and \$2988.08 for 1963, both with interest.
3. On his return for 1962 taxpayer claimed 99 days worked in New York out of 302 1/2 days worked in the entire year and on his return for 1963 he claimed 74 1/2 days worked in New York out of 288 1/2 worked in the entire year.
4. The notice of deficiency dated January 7, 1965, allocates for 1962 151 1/2 days to New York out of 225 working days and for 1963, 144 1/4 New York days out of 216 working days. The notice stated that some of the days the taxpayer asserted he worked at his Connecticut home were spent on business other than that for which he reported salary to New York.

CORRECTION FOLLOWS



NOTE: THE FOLLOWING
DOCUMENT(S) ARE BEING REFILMED
TO ENSURE CLARITY

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CARROLL Y. & MARGARET G. BELKNAP	:	DECISION
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5. The notice of deficiency dated April 30, 1965, allocates for 1962 231 days to New York out of 242 working days and for 1963 no allocation is allowed. Said notice did not allow him any credit for days allegedly worked in Connecticut.

6. Mr. Carroll Y. Belknap resides in Riverside, Connecticut, two miles outside of Greenwich, Connecticut.

7. Mr. Belknap is employed by C. H. Stuart & Co., Inc., located in the village of Newark, Wayne County, New York, near Rochester and 400 miles from Greenwich, Connecticut. Stuart is a holding company controlling twelve other corporations in the merchandising of various products.

8. Mr. Belknap since 1940 has had his own firm of market research consultants. He has had nationally-known clients, one of which, since 1944, was C. H. Stuart. In 1945, Mr. Belknap moved his office from New York City to Greenwich, Connecticut where space was more available. He maintained a Greenwich office during the years in question.

9. On December 18, 1953, Mr. Belknap entered into a contract for his exclusive services with C. H. Stuart. On September 1, 1958, this agreement was modified to make Mr. Belknap an employee of Stuart and to provide that he serve on its executive committee. Mr. Belknap's agreement with Stuart was undertaken in contemplation of the retirement of Mr. Belknap from his own active business. The agreements provided that Mr. Belknap should have no other clients except as approved by Stuart.

10. The terms of Mr. Belknap's agreement with Stuart provided that Mr. Belknap was to use his own name, thus holding himself out as an independent contractor. There were valid business reasons for this arrangement.

11. Stuart paid for the traveling expenses and living expenses of Mr. Belknap when he was required to be in Newark, New York.

12. Stuart reimbursed Mr. Belknap for his payroll, the rent on the Greenwich office, and his other operating expenses.

13. Mr. Belknap has no permanently assigned office in Newark but used any office space that would happen to be temporarily vacant while he was there. He has no facilities for research in Newark. He went there primarily for meetings. By his contract with Stuart not more than one-half of his working time would be spent in Newark, New York.

14. Prior to 1962 and 1963 Mr. Belknap's Connecticut office consisted of an entire floor at 1 East Putnam Road, Greenwich, Connecticut. At times he had up to 30 employees. An economy program by Stuart caused a reduction in Mr. Belknap's staff and office space. During 1962 and 1963 Mr. Belknap's office consisted of only one room in Connecticut staffed by one man and one secretary. However, some of his business files were kept at his house, and it was contemplated by Stuart that Mr. Belknap would use his own house for Stuart's business. Mr. Belknap took no deductions on his Federal return for the space used in his house.

15. By contract with Stuart, Belknap agreed to maintain in Greenwich a staff of at least one assistant and one secretary and to allow Stuart to decide the maximum size of the staff. Before the years in question, all salaries became payable directly by Stuart.

16. During the years in question Mr. Belknap received no compensation from any other source than Stuart and its affiliated companies, all of which was reported on his return. Payments from Stuart for reimbursement of expenses were reported on his return. Mr. Belknap received \$15,000.00 a year extra income from Stuart during the years in question by reason of his terminating the first contract with Stuart and entering into the supplementary contract.

17. Mr. Belknap could and did work on weekends and holidays

at the Greenwich office and at home. Taxpayer produced diaries which substantiated his claims as to days worked as represented in his returns.

Upon the foregoing findings and all the evidence in the case,
The State Tax Commission hereby

DECIDES:

A. The taxpayer has clearly shown that his contract of employment contemplated that his services were to be performed at his office and at his home in Connecticut and that he was therefore necessarily obligated to perform such services there.

B. The taxpayer has shown that the nature of his work was such that he could set his own working hours to include weekends and holidays and that he, in fact, did so.

C. The taxpayers' petition for redetermination of the deficiency is granted and the determination of deficiencies is cancelled in full.

DATED: Albany, New York
January 24, 1972.

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Koerner
COMMISSIONER