

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EUGENE P. & GRACE HACKER

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) 1967 & 1968 :

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

State of New York
County of Albany

Martha Funaro , 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 14th day of May , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon Eugene P. &
Grace Hacker (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Eugene P. & Grace Hacker
Route 1, Box 141
Keystone Heights, Florida 32656

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

14th day of May , 1973.

Lynn Wilson

Martha Funaro



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

May 14, 1973

Eugene P. & Grace Hacker
Route 1, Box 141
Keystone Heights, Florida 32656

Dear Mr. & Mrs. Hacker:

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

Please take further notice that pursuant to **section 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 relat-
ing 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 :
EUGENE P. & GRACE HACKER :
for a Redetermination of a Deficiency or :
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for the :
Years 1967 and 1968. :
:

DECISION

Eugene P. and Grace Hacker filed a petition under section 689 of the Tax Law for the redetermination of a deficiency for the year 1967 and for refund for the year 1968 in personal income tax under Article 22 of the Tax Law. Said deficiency for 1967 was issued under date of September 28, 1970, and amounts to \$487.47 plus \$71.87 interest for a total of \$559.34. The refund demanded for 1968 amounts to \$1,378.00.

The petitioners waived a hearing and agreed to a decision by the Commission on the file of the Income Tax Bureau. Said file has been duly examined and considered.

FINDINGS OF FACT

1. Petitioners were residents of Cranford, New Jersey during the years in question. They now reside in Florida.
2. Petitioner, Eugene P. Hacker, was the comptroller of J. J. Newberry Company which had corporate offices at 245 Fifth Avenue, New York City.
3. In the latter part of 1966, Mr. Hacker was stricken with a severe spinal arthritic condition which gradually became worse and which caused him to be frequently absent from work. He was persuaded

to take a three-month leave of absence beginning April 17, 1967, and ending July 16, 1967. He returned to work but his continuing ill health forced him to finally resign effective September 9, 1967.

Thereafter under the company's long-term sickness disability plan he received one full year's "sick pay salary" terminating on September 8, 1968.

4. Mr. Hacker's salary for 1967 was \$30,292.87. Of this \$1,160.00 was reported as sick pay and \$29,132.87 was reported as regular salary.

On his return he allocated \$30,293.00 by the fraction 133/166 claiming 33 days worked outside of New York State.

5. Mr. Hacker claims to have worked for a total of 166 days during 1967 and this is not in dispute. He claims however that 33 days were worked outside of New York and so allocated his salary from Newberry by the ratio of 133/166. Two of these days were spent at Newberry's retail stores located in New Jersey and 31 days were days he claims to have worked on company business during his 63 days spent at home during his leave of absence. The deficiency notice disallows the time worked at home and allocates by the ratio 164/166.

6. In 1968, Mr. Hacker received a total of \$27,304.76. This was made up of \$14,710.00 representing 1967 earnings, \$6,811.00 representing 1967 sick pay for the 79 day period, September 7, 1967 to December 31, 1967, and \$5,784.00 representing sick pay for 1968 from January 1 through September 6, 1968. Against this he applied

a sick pay exemption of \$3,600.00.

7. On petitioner's original 1968 return he failed to compute an allocation and he paid a tax of \$1,378.00. An amended return and claim for refund was timely filed on March 11, 1970. On this, petitioner allocated none of his salary to New York claiming that 175 working days were due to sick leave and 79 other nonworking days were attributable to non-New York activity.

This claim for refund was disallowed on August 31, 1970.

8. The petition with respect to the 1967 deficiency was filed with the Commission on January 8, 1971, about eleven days after the final due date for such petition on December 28, 1970.

CONCLUSIONS OF LAW

A. The petition with respect to the 1967 deficiency must be denied for failure to file the petition on time. The petitioner of course may still pay the tax and file a claim for refund.

B. The amount received in 1968 representing 1967 earnings is properly allocable by the ratio used in 1967 for other 1967 income. Since the allocation allowed then was 164/166 that can be allowed. The amounts received as sick pay were measured in part by petitioner's length of service and so are properly allocable by the ratios applying to earned salary in those years of service. This is the same method as is applied to pensions and other retirement benefits payable to nonresidents (Rep. 20 NYCRR 131.18). Since the only information available with respect to prior years allocation ratios is the ratio for 1967 and because that ratio (164/166) does not


seem untypical it can be used in this case.

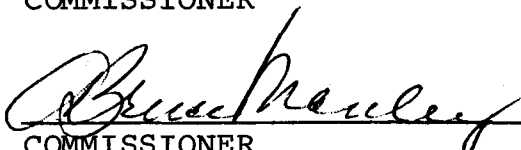
DECISION

The petition is denied with respect to the 1967 deficiency but is granted with respect to the 1968 refund claim to allow an allocation by the ratio 164/166 and a refund is computed to be \$31.27. The refund however will have to be applied against the unpaid 1967 deficiency.

DATED: Albany, New York
May 14, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER