

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HERMAN SHEER and VERA SHEER

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

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 February, 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon HERMAN and
VERA SHEER (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:

Herman and Vera Sheer
8-21 Belleaire Avenue
Fairlawn, New Jersey 07412

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 February, 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
February 14, 1973

Herman & Vera Sheer
8-21 Bellesaire Avenue
Fairlawn, New Jersey 07412

Dear Mr. and Mrs. Sheer:

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,


Paul H. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HERMAN SHEER and VERA SHEER	:	DECISION
for a Redetermination of Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1967.	:	

Petitioners, Herman Sheer and Vera Sheer, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1967. (File No. 73171874). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on June 19, 1972, at 2:15 P.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Albert J. Rossi, Esq., of Counsel).

ISSUE

Were 82 days spent at home in New Jersey due to illness by petitioner, Herman Sheer, during the year 1967 properly included in total days worked in said year for purposes of allocation of income?

FINDINGS OF FACT

1. Petitioners, Herman Sheer and Vera Sheer, filed a New York State income tax nonresident return for the year 1967. On Schedule A-1 of said return they claimed that petitioner, Herman Sheer's days worked in said year totaled 240 and that his days worked in New York State totaled 78.

2. On September 29, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Herman Sheer and Vera Sheer, wherein it disallowed as working days during the year 1967, 82 of the 240 days that had been claimed by petitioners in their income tax return. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$415.49.

3. Petitioners, Herman Sheer and Vera Sheer, were residents of the State of New Jersey during the year 1967.

4. Petitioner, Herman Sheer, became totally disabled on September 5, 1967. He did not return to work after that date.

5. On March 1, 1965, the Grand Union Company established a plan of long term disability benefits for their employees. The plan was in effect during the year 1967. Petitioner, Herman Sheer, was entitled to disability benefits under the plan. The plan provided in part that if an employee had more than five but less than ten years service with the company at the time that he became disabled he would be entitled to three months full pay and three months half pay from the date of disability. He had been employed by the company for nine years in 1967. He therefore received full pay for three months from September 5, 1967 to December 4, 1967, and half pay from December 5, 1967 to March 4, 1968. These benefits were not funded by insurance. He received other insurance benefits under the plan subsequent to March 5, 1968.

6. There were 240 working days in the year 1967. Petitioner, Herman Sheer, worked 78 days in New York during said year. He worked 80 days outside of New York State during said year. He was

totally disabled for 82 working days during said year. He spent said 82 days at his home in New Jersey.

CONCLUSIONS OF LAW


A. That the 82 days during the year 1967 spent at home by petitioner, Herman Sheer, a nonresident, because of illness were nonworking days for purposes of allocation in accordance with the meaning and intent of 20 NYCRR 131.16. Therefore, the proper ratio for purposes of allocation is determined by dividing the 78 days he worked in New York State during the year 1967 by the total of 158 days he worked during said year.

B. That the petition of Herman Sheer and Vera Sheer is denied and the Notice of Deficiency issued September 29, 1969 is sustained.

DATED: Albany, New York
February 14, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER