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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK A. SIMMS & JEANNE W. SIMMS

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) 1961, 1962, 1963,
1964, 1965 & 1966

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 26th day of November , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon Frank A. &
Jeanne W. Simms (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Frank A. Simms
c/o Trascott, Alyson, Craig, Inc.
179 Cedar Lane
Teaneck, New Jersey 07666
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

26th day of November , 1973.





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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 26th day of November , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Joseph Rosenberg, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Joseph Rosenberg, Esq.

Alexander, Katz & Rosenberg
200 E. 42nd Street
New York, New York 10016

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

26th day of November , 19 73

George S. Van Patten

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Mario A. Procaccino,
~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

November 26, 1973

Mr. & Mrs. Frank A. Simms
c/o Trascott, Alyson, Craig, Inc.
179 Cedar Lane
Teaneck, New Jersey 07666

Dear Mr. & Mrs. Simms:

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 deci-
sion must be commenced within **4 Months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

for Redetermination of Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1961, 1962, 1963, 1964, 1965 and 1966. :

1. Petitioners, Frank A. Simms and Jeanne W. Simms, filed New York State Income Tax nonresident returns for the years 1961 through 1966. On said returns they allocated petitioner, Frank A. Simms' income for said years, based upon the number of working days he allegedly worked within and without New York State during said years.

2. On March 15, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Frank A. Simms and Jeanne W. Simms, disallowing their allocation of income for the year 1961 upon the grounds that days worked at home by petitioner, Frank A. Simms, were not considered to be out-of-state working days and accordingly issued a Notice of Deficiency in the sum of \$4,691.76.

3. On September 13, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Frank A. Simms and Jeanne W. Simms, disallowing their allocation income for the years 1962 and 1963 upon the grounds that days worked at home by petitioner, Frank A. Simms, were not considered to be out-of-state working days and accordingly issued a Notice of Deficiency in the sum of \$7,986.75.

4. On November 14, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Frank A. Simms and Jeanne W. Simms, for the year 1964 for the above named reasons and accordingly issued a Notice of Deficiency in the sum of \$5,550.18.

5. On August 21, 1967, and November 24, 1969, the Income Tax Bureau issued statements of audit changes against petitioners, Frank A. Simms and Jeanne W. Simms, disallowing their allocation of income for the years 1965 and 1966 respectively on the grounds that they failed to substantiate allocation of income earned within and without New York State. Accordingly, notices of deficiencies were issued in the sum of \$6,098.85 for 1965 and \$6,351.23 for 1966.

6. Petitioner, Frank A. Simms, is a well-known television and radio announcer. His services are made available to various sponsors of television and radio productions. Petitioner must audition many times for the commercials.

7. Petitioner, Frank A. Simms, maintains an office equipped with recording instruments in his home in Stamford, Connecticut, to help him prepare for auditions. He makes sample reels of his voice

and sample commercials to send to prospective sponsors with this equipment. He also rehearses his commercials and warm ups in his home studio. During the years 1961, 1962, 1963, 1964, 1965 and 1966, petitioner claimed 139 days, 112 days, 90 days, 174 days, 41 days, and 31 days, respectively, as days worked at home. In addition, petitioner, Frank A. Simms, claimed 30 days in 1965 and 30 days in 1966 as days worked in Connecticut entertaining businessmen at petitioner's country club.

8. Petitioner, Frank A. Simms, failed to submit documentary or other sufficient evidence to substantiate his claim of 85 days spent working in California, Florida, and New Jersey during the year 1965.

9. Petitioner, Frank A. Simms, offered diaries and business statements to show that he had traveled to California in 1966 for a total of 11 days to audition for various commercials. He failed to submit documentary or other sufficient evidence to substantiate his claim of working 43 days in California and New Jersey during the year 1966.

CONCLUSIONS OF LAW

A. That the days spent working at his home in Connecticut and entertaining at his club in Connecticut by petitioner, Frank A. Simms, were done by reason of his necessity and convenience and not for the necessity of his employers and, therefore, for the purpose of salary income, said days cannot be included by him in computing total days worked outside of New York State in a year in accordance with the meaning and intent of section 632(c) of the Tax Law.

B. That petitioner failed to substantiate alleged days worked in California, Florida, and New Jersey during the year 1965, since he did not submit documentary or other sufficient evidence to support his claim.

C. That petitioner, Frank A. Simms, proved that he worked 11 days in California during the year 1966, but he failed to submit documentary or other sufficient evidence to support his allocation of the other 43 days he claimed as worked in California and New Jersey.

D. That the petition of Frank A. Simms and Jeanne W. Simms is granted to the extent of allowing for salary income purposes an allocation of 11 days worked without the State of New York during the year 1966. The petition is denied in all other respects.

DATED: Albany, New York
November 26, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER