

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

H. ROLAND SWIFT & RUTH T. SWIFT :

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) 1966 & 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 H. Roland & Ruth T. Swift (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: H. Roland & Ruth T. Swift
657 Westfield Avenue
Westfield, New Jersey 07090

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
STATE TAX COMMISSION

In the Matter of the Petition

of
H. ROLAND SWIFT & RUTH T. SWIFT :

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) 1966 & 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 Thomas J. Bottiglieri, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Thomas J. Bottiglieri, C.P.A.
c/o Patterson & Ridgway
29 Broadway
New York, New York 10006
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

**H. Roland & Ruth T. Swift
657 Westfield Avenue
Westfield, New Jersey 07090**

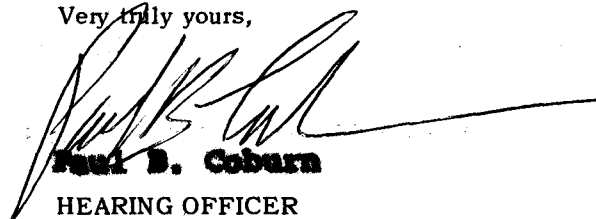
Dear Mr. & Mrs. Swift:

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 B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|-----------------------------------|---|----------|
| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| H. ROLAND SWIFT and | : | |
| RUTH T. SWIFT | : | |
| | : | DECISION |
| for Redetermination of Deficiency | : | |
| or for Refund of Personal Income | : | |
| Tax under Article 22 of the Tax | : | |
| Law for the Years 1966 and 1967. | : | |
| | : | |

Petitioners, H. Roland Swift and Ruth T. Swift, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1966 and 1967 (File No. 89179875). 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 April 26, 1972, at 2:45 p.m. Petitioners appeared by Thomas J. Bottiglieri, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq. of Counsel).

ISSUE

What portion of the commission income received by petitioner, H. Roland Swift, from Spencer Trask & Company during the years 1966 and 1967 was allocable to New York State.

FINDINGS OF FACT

1. Petitioners, H. Roland Swift and Ruth T. Swift, filed New York State income tax nonresident returns for the years 1966 and 1967. They allocated petitioner, H. Roland Swift's income earned as a registered representative for said years based upon the number

of alleged working days that he worked within and without New York State during said years. They alleged that he worked 52 days outside of New York State during the year 1966 and 75 days outside of New York State during the year 1967.

2. On December 16, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, H. Roland Swift and Ruth T. Swift, disallowing 40 days during the year 1966 and 69 days during the year 1967 alleged to have been worked outside of New York State upon the grounds that said days were spent at home and therefore were not a proper basis for allocation. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,550.58.

3. Petitioner, H. Roland Swift and Ruth T. Swift, in their petition alleged that the allocation of petitioner, H. Roland Swift's commission income for the years 1966 and 1967 should be based on the volume of business conducted within and without New York State and not on the number of days worked within and without the State.

4. Petitioners, H. Roland Swift and Ruth T. Swift, were residents of the State of New Jersey during the years 1966 and 1967.

5. Petitioner, H. Roland Swift, was a registered representative for Spencer Trask & Company during the years 1966 and 1967. It was engaged in the stock brokerage business. His remuneration was based solely upon commissions earned on the purchase and sale of securities for his customers. He was provided with a desk, a telephone and a secretary in the New York City office of the company. The company

did not have an office in New Jersey. All securities transactions were ultimately handled through the New York office.

6. Petitioner, H. Roland Swift, earned \$51,330.00 in commissions resulting from the purchase and sale of securities for his customers during the year 1966. Forty-five and Fifty-five hundredths percent of these commissions were derived from customers located outside of New York State. He earned \$80,985.00 in commissions during the year 1967. Forty-one and sixty-six hundredths percent of these commissions were derived from customers located outside of New York State. He failed to submit any documentary or other substantial evidence as to the volume of business physically transacted and orders physically taken by him within and without New York State.

7. Petitioner, H. Roland Swift, maintained a room in his home in New Jersey which he used as an office during the years 1966 and 1967. He was not reimbursed by Spencer Trask & Company for expenses he incurred in connection therewith. Substantially, all of the days claimed to have been worked outside of New York State constituted days worked at home in New Jersey. He frequently conferred with his out of state customers at his home in New Jersey. The remaining time out of state was spent visiting customers and potential customers.

CONCLUSIONS OF LAW

A. That since petitioner, H. Roland Swift, failed to prove the volume of business physically transacted by him outside the State of New York, during the years 1966 and 1967, he is not entitled to allocate commissions derived from customers located outside of the State of New York in accordance with the meaning and intent of 20 NYCRR 131.15.

B. That the petition of H. Roland Swift and Ruth T. Swift is denied and the Notice of Deficiency issued December 16, 1968, is sustained.

DATED: Albany, New York
February 14, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER