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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT C. KIRKWOOD and
VIRGINIA B. KIRKWOOD

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) 1964.

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 1st day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon ROBERT C. KIRKWOOD and
VIRGINIA B. KIRKWOOD (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. and Mrs. Robert C. Kirkwood
Dempsey Lane
Greenwich, 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

1st day of February, 1974.

James S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT C. KIRKWOOD and

VIRGINIA B. KIRKWOOD

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Tax Law for the (Year(s) 1964.

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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 1st day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon MICHAEL D. BRAY, ESQ.

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
Michael D. Bray, Esq.

wrapper addressed as follows: Davies, Hardy, Ives & Lawther
Two Broadway
New York, New York 10004

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

1st day of February, 1974.

James L. 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
Mario A. Procaccino

~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 1, 1974

Mr. and Mrs. Robert C. Kirkwood
Dempsey Lane
Greenwich, Connecticut

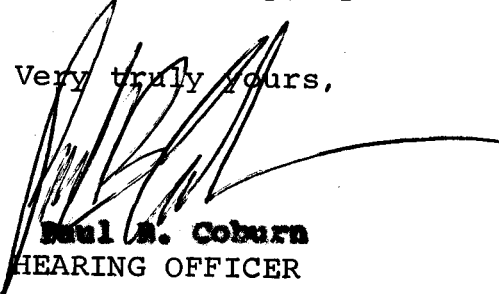
Dear Mr. and Mrs. Kirkwood:

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 A. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT C. KIRKWOOD and :
VIRGINIA B. KIRKWOOD : DECISION
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1964. :

Petitioners, Robert C. Kirkwood and Virginia B. Kirkwood, have timely filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1964. (File No. 29230124.) 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 May 24, 1973, at 9:15 A.M. Petitioners appeared by Davies, Hardy, Ives & Lawther, Esqs., (Raymond T. Munsell, Esq., of Counsel). The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of Counsel).

Were 58 Saturdays and Sundays worked by petitioner, Robert C. Kirkwood, during the year 1964 at his home in Connecticut includ-
ible in total days worked in the year and in total days worked
outside of New York State for purposes of allocation of salary
income?

1. Petitioners, Robert C. Kirkwood and Virginia B. Kirkwood,

filed a New York State income tax nonresident return for the year 1964. They allocated salary income in the sum of \$238,841.55 received by petitioner, Robert C. Kirkwood, from F.W. Woolworth Co. based upon the number of days he alleged to have worked within and without New York State during said year. They alleged in said return that he worked 365 days during said year of which 200 days were worked in New York State.

2. On December 12, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Robert C. Kirkwood and Virginia B. Kirkwood, imposing additional New York State personal income tax for the year 1964 in the sum of \$4,331.30. This computation was arrived at by revising the allocation formula referred to in the prior paragraph so as to reduce total days worked in the year from 365 to 258 and to reduce total days worked in New York State from 200 to 195. As part of the calculation it disallowed 38 Saturdays and 20 Sundays worked at home as days worked in the year upon the grounds that said days worked at home were not a proper basis for allocation of income from salary. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$4,761.96.

3. Petitioners, Robert C. Kirkwood and Virginia B. Kirkwood, were residents of the State of Connecticut during the year 1964. They resided in two different homes on Dempsey Lane, Greenwich, Connecticut. Each home contained a room set aside for an office

which was fully equipped as such and used by petitioner, Robert C. Kirkwood, for business purposes.

4. Petitioner, Robert C. Kirkwood, was employed as president and chief executive officer of F.W. Woolworth Co. during the year 1964. He did not receive a fixed salary but had a contract which entitled him to a percentage of the profits of the company.

5. The corporate offices of F.W. Woolworth Co. were located in the Woolworth Building in New York City during the year 1964. The New York office was open during the day, Monday through Friday. After 5:30 P.M. during the week and on weekends the building was closed, except for cleaning personnel. The company could have, at an increased expense, opened the office on the weekends in order to afford petitioner, Robert C. Kirkwood, a place to work.

6. Petitioner, Robert C. Kirkwood, during the year 1964, decided what his duties were for F.W. Woolworth Co. and where he should perform those duties. He was not obligated to perform any particular service except to do whatever he deemed necessary to enhance its profits.

7. The work performed at his homes in Connecticut by petitioner, Robert C. Kirkwood, during the year 1964 for F.W. Woolworth Co. consisted of preparation and review of reports which he had been unable to do during the normal five-day week in his New York office, telephone conversations with company personnel, discussion of corporate matters with visiting company executives and social and business meetings with representatives

of the company's suppliers. The services which he performed in his homes in Connecticut could have been performed elsewhere on the particular dates when the meetings and contacts took place.

8. There were 366 days during the year 1966. Petitioner, Robert C. Kirkwood, did not work on 24 Sundays, 5 Saturdays, 6 holidays, 1 sick day and 14 vacation days during said year making a total of 50 nonworking days. He worked in New York State on 195 days during said year. He worked outside of New York State on 121 days during said year. Of said 121 days, 38 were Saturdays and 20 were Sundays worked at his home in Greenwich, Connecticut.

CONCLUSIONS OF LAW


A. That the 58 Saturdays and Sundays worked at home in Connecticut during the year 1964 by petitioner, Robert C. Kirkwood, were worked there by reason of his necessity and convenience and not for the necessity of his employer and therefore, for purposes of allocation of salary income, said Saturdays and Sundays cannot be included by him in computing total days worked in said year or total days worked outside of New York State in said year in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

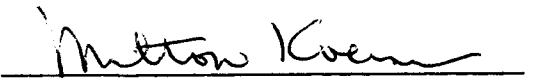
B. That the petition of Robert C. Kirkwood and Virginia B. Kirkwood is denied and the Notice of Deficiency issued December 12, 1966, is sustained.

DATED: Albany, New York
February 1, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER