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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HUGH D. KLEMME

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)) 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 6th day of February, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Hugh D. Klemme

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Mr. Hugh D. Klemme  
6 Topsail Road  
Rowayton, Connecticut 06853

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

6th day of February, 1974.

*James J. Van Allen*  
*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  
February 6, 1974

Mr. Hugh D. Klemme  
6 Topsail Road  
Rowayton, Connecticut 06853

Dear Mr. Klemme:

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 OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HUGH D. KLEMME	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1968.	:	

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Petitioner, Hugh D. Klemme, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1968. (File No. 8-29182473). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, for March 19, 1973, at 1:30 P.M. On March 16, 1973, petitioner advised the State Tax Commission, in writing, that he waived a formal hearing and submitted the case to it upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Did petitioner, Hugh D. Klemme, properly allocate his salary income for the year 1968, by basing said allocation upon the number of days he worked within and without New York State during said year?

FINDINGS OF FACT

1. Petitioner, Hugh D. Klemme, filed a New York State income tax nonresident return for the year 1968. He allocated his income for said year based upon the number of days he alleged to have worked within and without New York State during said year. He

reported for said year total wages of \$27,714.00 and wages allocable to New York State of \$14,167.00. He claimed a refund of \$95.82.

2. On July 27, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Hugh D. Klemme, in which it determined that his wages allocable to New York State for the year 1968 were \$17,446.77. It based this allocation upon the actual salary received by him while he was working outside of New York State. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$131.44.

3. Petitioner, Hugh D. Klemme, was a resident of the State of Connecticut during the year 1968. He resided at 6 Topsail Road, Rowayton, Connecticut.

4. Petitioner, Hugh D. Klemme, was employed by American Overseas Petroleum Limited as a geologist during the year 1968. His employer's office was located in New York City.

5. Petitioner, Hugh D. Klemme, worked a total of 268 days during the year 1968. He worked 119 days outside of the United States and 12 days outside of New York State in the United States during said year. The days worked outside of New York State were field assignments at the sites of oil drilling and prospecting operations. He worked seven days a week when he was in the field. This resulted in his working 18 Saturdays and 17 Sundays during said year.

6. Petitioner, Hugh D. Klemme, received an annual salary paid on a monthly basis from American Overseas Petroleum Limited during the year 1968. He did not receive additional compensation for Saturdays, Sundays or overtime worked. He did not receive a different rate or manner of compensation for days worked outside of New York State.

7. Petitioner, Hugh D. Klemme, performed services for American Overseas Petroleum Limited from February 29, 1968, to March 22, 1968, in Japan and Taiwan, from April 9, 1968, to June 14, 1968, in Libya and from October 17, 1968, to November 14, 1968, in Japan. He also performed services for 12 days in California during the year 1968.

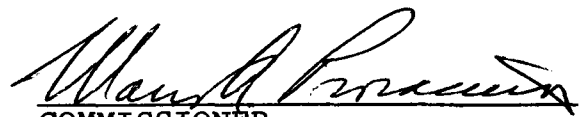
CONCLUSIONS OF LAW

A. That petitioner, Hugh D. Klemme's method of allocating his salary income for the year 1968, in accordance with the provisions of NYCRR 131.16, resulted in a fair and equitable allocation of his income attributable to his occupation which was carried on partly within and partly without the State. It was therefore not necessary for the Income Tax Bureau to impose an alternate method of allocation pursuant to NYCRR 131.21.

B. That the petition of Hugh D. Klemme, is granted; the Notice of Deficiency issued July 27, 1970, is cancelled; and the Income Tax Bureau is hereby directed to refund to him the sum of \$95.82, together with such interest as may be lawfully due.

DATED: Albany, New York  
February 6, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER