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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR SYLVAN

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 5th day of April , 19 74 she served the within
Notice of Decision (or Determination) by (certified) mail upon Seymour Sylvan

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

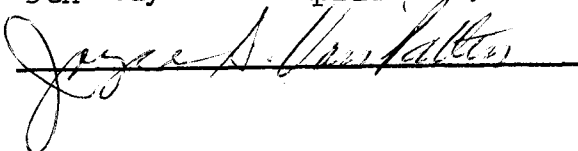
wrapper addressed as follows: Mr. Seymour Sylvan
846 Midland Road
Oradell, New Jersey 07649

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

5th day of April , 1974.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
Mario A. Procaccino
~~NEW YORK TAXPAYER~~, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

April 5, 1974

Mr. Seymour Sylvan
846 Midland Road
Oradell, New Jersey 07649

Dear Mr. Sylvan:

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	:	
SEYMOUR SYLVAN	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1968.	:	

Petitioner, Seymour Sylvan, 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. 8-29181075).

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 October 18, 1973, at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of Counsel).

ISSUE

Was all of the salary income received by petitioner, Seymour Sylvan, from Goldsmith Bros. during the year 1968, allocable to New York State?

FINDINGS OF FACT

1. Petitioner, Seymour Sylvan, and his wife filed a New York State nonresident combined income tax return for the year 1968. They allocated the income received by him from his

employer, Goldsmith Bros. based upon the number of alleged days he worked within and without New York State during said year. They claimed that he worked 277 days during said year of which 36 days were worked outside of New York State. He claimed a refund of \$316.00 on said return.

2. On September 28, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Seymour Sylvan, disallowing the allocation of 36 days as days worked outside of New York State during the year 1968 upon the grounds time spent at home was not a proper basis for allocation, holding all of his salary subject to tax and therefore imposing additional personal income tax in the sum of \$177.66. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$193.14.

3. Petitioner, Seymour Sylvan, was a resident of the State of New Jersey during the year 1968. He resided in a home located at 846 Midland Road, Oradell, New Jersey.

4. Petitioner, Seymour Sylvan, was employed by Goldsmith Bros. as sales promotion director during the year 1968. He received a salary of \$19,998.98. The company was engaged in the sale of stationery supplies in New York State. The office at which petitioner normally worked during the usual five-day working week was located in New York City. He was in charge of advertising, public relations and display. Part of his duties consisted of editing and laying out an annual merchandise catalogue.

5. The work performed at his home in New Jersey by petitioner,

Seymour Sylvan, during the year 1968 consisted of preparing the annual catalogue and planning and coordinating monthly advertising and display programs. It was more convenient for him to perform this work at home since he did not have enough time during the normal business day and since he found it difficult to concentrate at the company office due to interruptions caused by phone calls, meetings and the daily office routine.

6. Petitioner, Seymour Sylvan, used one room in his home in New Jersey as an office during the year 1968. His employer furnished him with a drawing table, a drawing lamp and all office and art supplies that he required.

7. During the year 1968, petitioner, Seymour Sylvan, spent 36 days working at home. The 36 days consisted of 13 Fridays and 23 Saturdays. He spent five days during said year working at a stationery show in Chicago, Illinois, on behalf of his employer, of which one day was Saturday. He worked a total of 251 week days during the year including the 13 Fridays worked at home, plus one Saturday at the stationery show.

CONCLUSIONS OF LAW

A. That the 23 Saturdays worked at home in New Jersey during the year 1968 by petitioner, Seymour Sylvan, 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 cannot be included by him in computing total days worked in a year or 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 and 20 NYCRR 131.16.

B. That the 13 Fridays worked at home in New Jersey during the year 1968 by petitioner, Seymour Sylvan, 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 days must be held to be days worked within New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

C. That the five days worked outside of New York State and not at home during the year 1968 by petitioner, Seymour Sylvan, for purposes of allocation of salary income, may be allocated as days worked outside of New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

D. That therefore, for purposes of allocation of salary income during the year 1968, petitioner, Seymour Sylvan, worked a total of 252 days of which 247 days are considered to be days worked in New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.


E. That the petition of Seymour Sylvan is granted to the extent of reducing additional personal income tax due for the year 1968 from \$177.66 to \$169.11 together with such interest as may be lawfully due; that the Income Tax Bureau is hereby

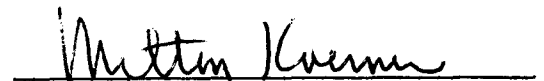
directed to accordingly modify the Notice of Deficiency issued September 28, 1970, and; that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
April 5, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER