

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

REESE H. HARRIS and DOROTHY R. HARRIS

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 and 23 of the
Tax Law for the Year(s) 1964, 1965 and
1966.

State of New York
County of Albany

JANET MACK, 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 12th day of May, 1975, she served the within
Notice of Decision (~~xx DETERMINATION~~) by (certified) mail upon REESE H. HARRIS and
DOROTHY R. HARRIS (~~representative of the~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Reese H. Harris
P.O. Box 114
Essex, 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 the~~)
~~xx~~ 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

12th day of May, 1975.

James S. Van Patten

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

REESE H. HARRIS and DOROTHY R. HARRIS

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 and 23 of the
Tax Law for the Year(s) 1964, 1965 and:
1966.

State of New York
County of Albany

JANET MACK, 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 12th day of May, 1975, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon DONALD L. SHARPE, ESQ.

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

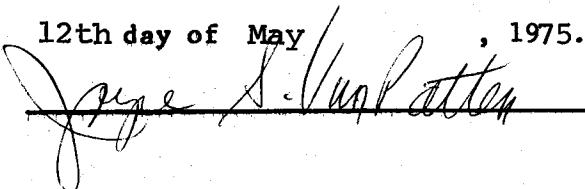
Donald L. Sharpe, Esq.
445 Park Avenue - Suite 304
New York, New York 10022

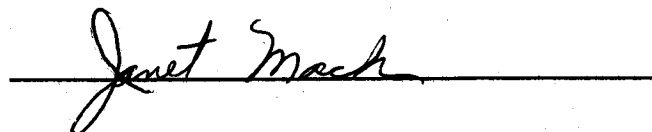
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

12th day of May, 1975.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
James H. Kelly, Jr.
MARIO A. PROCCACCIO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

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

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
May 12, 1973

Mr. and Mrs. Reese H. Harris
P.O. Box 114
Essex, Connecticut

Dear Mr. and Mrs. Harris:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **690 and 722** 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

In the Matter of the Petition	:	
of	:	
REESE H. HARRIS and DOROTHY R. HARRIS	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1964, 1965 and 1966.	:	

In the Matter of the Petition	:	
of	:	
DOROTHY R. HARRIS	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1964.	:	

Petitioners, Reese H. Harris and Dorothy R. Harris, 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 1964, 1965 and 1966. Petitioner, Dorothy R. Harris, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1964. (File No. 6-53110711.) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on February 26, 1974, at 1:15 P.M. Petitioners appeared by Donald L. Sharpe, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUES

I. Was petitioner, Reese H. Harris, entitled to allocate his income from his New York employer on the basis of days worked without New York State for entities other than said

employer during the years 1964, 1965 and 1966?

II. Was petitioner, Dorothy R. Harris, engaged in a business as a cattle breeder during the year 1964?

FINDINGS OF FACT

1. Petitioners, Reese H. Harris and Dorothy R. Harris, filed New York State income tax nonresident returns for the years 1964, 1965 and 1966. They allocated the salary income received by petitioner, Reese H. Harris, from his employer, Manufacturers Hanover Trust Company based upon the number of days he alleged to have worked for the company within and without New York State during said years. Petitioner, Dorothy R. Harris, did not file a New York State unincorporated business tax return for the year 1964.

2. On November 24, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Reese H. Harris and Dorothy R. Harris, disallowing the allocation by petitioner, Reese H. Harris, of 14 days during the year 1964, 18 days during the year 1965 and 10 days during the year 1966, as days worked outside of New York State upon the grounds that said days were not worked for his New York employer, and imposing net additional personal income tax for said years in the sum of \$516.17. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$592.43.

3. On November 24, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Dorothy R. Harris, imposing unincorporated business tax for the year 1964 in the sum of \$5,953.08 upon the grounds that she was engaged in business as a cattle breeder and her net profit from the sale of her cattle was subject to said tax. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$7,598.73.

4. During the years 1964, 1965 and 1966, petitioner, Reese H. Harris, was employed in New York City by the Manufacturers Hanover Trust Company as executive vice-president of the Trust Department. His duties consisted of supervising the personnel and investment activities of the Trust Department. As a senior officer of the bank, he was expected to represent it generally with the business community in connection with furthering its goodwill and business connections.

5. During the years 1964, 1965 and 1966, petitioner, Reese H. Harris, was a director of the Connecticut General Life Insurance Company. He spent nine days during the year 1964, 13 days during the year 1965 and seven days during the year 1966 attending board of directors meetings of said company in Bloomfield, Connecticut. He attended these meetings in his capacity as a director of said company and not in his capacity as executive vice-president of the Manufacturers Hanover Trust Company. The Manufacturers Hanover Trust Company's trust account held a substantial block of the Connecticut General Life Insurance Company's stock but otherwise there was relatively little business transactions between the two companies.

6. During the years 1964, 1965 and 1966, petitioner, Reese H. Harris, was a trustee of the Society for Savings. He spent six half days during the year 1964, two half days during the year 1965 and four half days during the year 1966 at trustee's meetings of said society in Hartford, Connecticut. He attended these meetings in his capacity as a trustee of said society, and not in his capacity as executive vice-president of the Manufacturers Hanover Trust Company. He received trustee's fees for attending said meetings. The bank and the Society for Savings had an active business relationship.

7. During the year 1964, petitioner, Reese H. Harris, was a trustee of the Northfield School and the Mt. Hermon School. He spent two days during the year 1964 at trustee's meetings of said schools held in East Northfield, Massachusetts. He attended these meetings in his capacity as a trustee of said schools, and not in his capacity as executive vice-president of the Manufacturers Hanover Trust Company. There was no substantial business relationship between the schools and the bank.

8. During the year 1965, petitioner, Reese H. Harris, was a director of the Phelps Dodge Corporation. He spent three days during said year attending board of directors meetings of said corporation in Arizona. He attended these meetings in his capacity as a director of said company and not in his capacity as executive vice-president of Manufacturers Hanover Trust Company. He received director's fees for attending said meetings. The bank and the Phelps Dodge Corporation had an active business relationship.

9. During the years 1965 and 1966, petitioner, Reese H. Harris, was president and a director of the Y.M.C.A. of Greater New York. He spent one day during the year 1965 in Chicago on Y.M.C.A. business and one day during the year 1966 inspecting its camps in Pennsylvania. He attended these inspections in his capacity as president and a director of said organization and not in his capacity as executive vice-president of Manufacturers Hanover Trust Company. The bank and the Y.M.C.A. of Greater New York did not have a relatively active business relationship.

10. On their 1964, 1965 and 1966 New York State income tax returns, petitioner, Reese H. Harris, in allocating the salary income received from the Manufacturers Hanover Trust Company, treated the days referred to in the prior five paragraphs as days worked outside of New York State on behalf of the Manufacturers Hanover Trust Company,

11. On June 1, 1959, petitioner, Dorothy R. Harris, executed a breeder contract with Briarcliff Farms and Briarcliff Farms, Inc. Said agreement provided for the purchase of 125 brood cows for the sum of \$125,000.00 evidenced by a note secured by a purchase money chattel mortgage. On June 1, 1964, the brood cows and calves were sold and petitioner, Dorothy R. Harris, terminated her contract with Briarcliff Farms and Briarcliff Farms, Inc.

12. During said period, the herds were hopelessly comingled. Petitioner, Dorothy R. Harris' brood cows were originally tagged with identification tags but after a few weeks, the tags became loosened and indistinguishable. Upon the death or removal of a brood cow, the management of Briarcliff Farms would hardly ever know to which herd said cow belonged. Brood cows were arbitrarily assigned to the particular herds. One herd could not have been separated out without great difficulty and expense. Although petitioner, Dorothy R. Harris, was given an opportunity to view her herd, any concept of management or selection of an individual herd was impossible when viewed against the overall operation of Briarcliff Farms.

13. In the year 1964, petitioner, Dorothy R. Harris, incurred expenses totaling \$7,246.64 for the breeding and maintenance of cattle. Said expenses were held to be completely deductible for Federal income tax purposes.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Reese H. Harris, on behalf of the entities other than Manufacturers Hanover Trust Company during the years 1964, 1965 and 1966, did not constitute services rendered for said employer without New York State and, therefore, he is not entitled to allocate his income based upon days worked outside of New York State for said entities in accordance with the meaning and intent of 20 NYCRR 131.16.

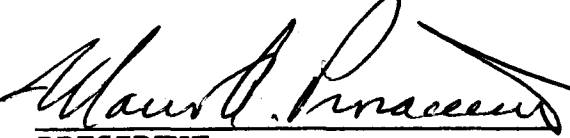
B. That petitioner, Dorothy R. Harris' interest in brood cows constituted a security purchased and sold for her own account and therefore, she was not engaged in an unincorporated business as a cattle breeder in 1964 in accordance with the meaning and intent of section 703(d) of the Tax Law.

C. That the petition of Reese H. Harris and Dorothy R. Harris for redetermination of deficiency or for refund of personal income tax for the years 1964, 1965 and 1966 is denied and the Notice of Deficiency issued against them November 24, 1969, is sustained.

D. That the petition of Dorothy R. Harris for redetermination of deficiency or for refund of unincorporated business tax for the year 1964 is granted and the Notice of Deficiency issued against her November 24, 1969, is hereby cancelled.

DATED: Albany, New York
February 28, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

Commissioner Koerner dissents from the above decision.