

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

VINCENT A. and LOIS B. DEMO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (s) 22 of the :
Tax Law for the Year (s) or Period(s) 1966:

State of New York
County of Albany

Carmen Mottolese, 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 October, 1976, she served the within Notice of Decision by (certified) mail upon Vincent A. and Lois B. Demo ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Vincent A. Demo
566 Colonial 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~ 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 October, 1976

Carmen Mottolese

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

October 1, 1976

TELEPHONE: (518) 457-3850

Mr. & Mrs. Vincent A. Demo
566 Colonial Avenue
Westfield, New Jersey 07090

Dear Mr. & Mrs. Demo:

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

Please take further notice that pursuant to
Section ~~601~~ **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.

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. They
will be referred to the proper party for reply.

Very truly yours,
Frank J. Puccia

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
VINCENT A. and LOIS B. DEMO	:	DECISION
for a Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Article	:	
22 of the Tax Law for the Year 1966.	:	

Petitioners, Vincent A. and Lois B. Demo, 566 Colonial Avenue, Westfield, New Jersey 07090, have filed a petition for redetermination of a deficiency or for a refund of personal income taxes under Article 22 of the Tax Law for the year 1966. (File No. 53230932). A small claims hearing was held before Paul Coburn, Formal Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1976 at 3:00 P.M. Petitioner submitted a letter dated April 26, 1976 which letter was received into evidence after the hearing. Petitioner, Vincent A. Demo, appeared pro se and for his wife, petitioner, Lois B. Demo. The Income Tax Bureau appeared by Peter Crotty, Esq., (James A. Scott, Esq. of counsel).

ISSUE

Should the days on which services were performed by the petitioner at his home be considered as days worked outside New York State for income allocation purposes?

FINDINGS OF FACT

1. Petitioners, Vincent A. and Lois B. Demo, filed a joint 1966 New York State nonresident income tax return showing wage income earned in New York of \$25,892.00. This amount was computed on the basis of a ratio of the number of days alleged to have been worked within and without New York State.

2. Upon audit, the Income Tax Bureau issued a notice of a deficiency asserting that of the total wages of \$40,000.00 shown on the 1966 tax and wage statement (Form IT-2102) \$33,541.67 of such amount was allocable as wages earned in New York State.

3. Petitioner, Vincent A. Demo, was employed by the Conrad Steamship Company Ltd., and held the title of Joint General Manager, an administrative position, for their operations within the United States.

4. Since the petitioner, Vincent A. Demo, was scheduled to retire on December 31, 1966, and since there was an acute shortage of company office space, the petitioner, per mutual consent, decided that during November and December of 1966, he would perform his administrative duties from his personal residence in New Jersey.

5. The petitioner's activities at home were conducted by correspondence and by telephone, and were primarily directed toward the completion of his assignments and/or duties prior to his retirement.

6. Petitioner, Vincent A. Demo, conceded that the number of days spent at his Vermont cabin should be considered as vacation days.

CONCLUSIONS OF LAW

A. The services performed at the petitioner's home were performed there by reason of his own necessity and convenience, and not for the necessity of his employer and, therefore, for purposes of allocation of salary income, the 41 days worked at his home 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.

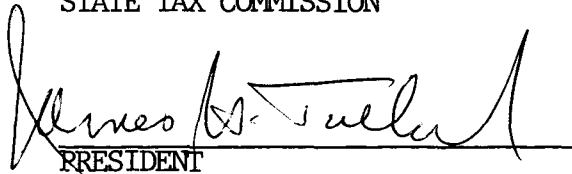
B. The five days spent in Vermont are vacation days and must be considered as non-working days for allocation purposes.

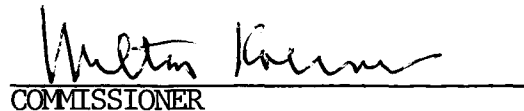
C. The petition of Vincent A. and Lois B. Demo is granted to the extent that the total salary of \$40,000.00 is to be apportioned based on a total of 236 days worked, of which 39 days must be held as worked outside New York State and 197 days to be held as worked in New York State. Accordingly, the ratio of 197/236 to \$40,000.00 results in a total salary income allocable to New York State of \$33,389.83.

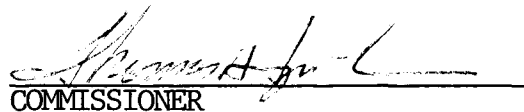
D. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued March 11, 1968; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
October 1, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER