

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL GILBERT, JR., & JANE M. GILBERT

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) 1970 :

State of New York
County of Albany

Donna Scranton, 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 23rd day of November, 1976, she served the within Notice of Decision by (certified) mail upon Paul & Jane M. Gilbert, Jr. ~~(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. Paul Gilbert Jr.
54 Park Slope
Ridgewood, New Jersey 07450
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

23rd day of November, 1976

Donna Scranton

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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PAUL GILBERT, JR., & JANE M. GILBERT

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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) 1970.

State of New York
County of Albany

Donna Scranton, 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 23rd day of November, 1976, she served the within Notice of Decision by (certified) mail upon Stephen B. Nathan, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Stephen B. Nathan, Esq.
102 Mamaroneck Avenue
Mamaroneck, New York 10543
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

23rd day of November, 1976.

Donna Scranton

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

November 23, 1976

TELEPHONE: (518) ~~457-3850~~

Mr. and Mrs. Paul Gilbert Jr.
54 Park Slope
Ridgewood, New Jersey 07450

Dear Mr. and Mrs. Gilbert:

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

Please take further notice that pursuant to
Section(2) **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,

PAUL B. COBURN
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PAUL GILBERT, JR., AND JANE M. GILBERT	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

Petitioners, Paul Gilbert, Jr., and Jame N. Gilbert, residing at 54 Park Slope, Ridgewood, New Jersey 07450, have filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970. (File No. 00573).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 10, 1976, at 2:45 P.M. Petitioners appeared by Stephen B. Nathan, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin A. Levy, Esq. of counsel).

ISSUE

Whether the days, petitioner, Paul Gilbert, Jr., worked at his home in Ridgewood, New Jersey, were allocable as days worked without New York State.

FINDINGS OF FACT

1. Petitioners, Paul Gilbert, Jr. and Jane M. Gilbert, filed a joint New York State nonresident income tax return for the year 1970.

2. On June 24, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Paul Gilbert, Jr. and Jane M. Gilbert, disallowing the days worked by petitioner, Paul Gilbert, Jr., at his home in Ridgewood, New Jersey, as allocable days worked outside New York State. The Income Tax Bureau made other adjustments not in issue. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency of \$2,473.83, plus interest of \$473.66, for a total sum of \$2,947.49.

3. In the year 1970, petitioner, Paul Gilbert, Jr., was an institutional bond salesman for Phelps, Fenn & Co., a major underwriting firm in municipal bonds, with offices in Manhattan. In said year, petitioner was the firm's principal institutional bond salesman as well as its vice president. He was responsible for calling on institutions in the security business, insurance companies, trust companies, banks, etc., located throughout the United States. Petitioner derived his income from commissions based on his total production. Most of petitioner's work was accomplished through extensive use of the telephone.

(3)

4. On February 4, 1970, petitioner, Paul Gilbert, Jr., suffered a severe fracture of his right ankle while working in the Caribbean. Thereafter, petitioner worked numerous days at his residence in Ridgewood, New Jersey. Petitioner's physical malady prevented him from working in his firm's offices in New York City. The firm installed a telephone and a "magic call system" in which numbers were pretaped in the phone, in petitioner's bedroom. Phelps, Fenn & Co. paid for the installation of said system and the subsequent phone bills. The installation of the system enabled petitioner to continue to service the firm's large accounts.

CONCLUSIONS OF LAW

A. That the days worked at home that were required by reason of petitioner, Paul Gilbert, Jr.'s physical condition, were by reason of petitioner's necessity and convenience and not for the necessity of his employer. The services he performed at home were completed at that location for reasons of personal health and convenience. As such, these days were days worked within New York State within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16. (Churchill v. Gallman, 38 App. Div. 2d 631, 326 N.Y.S. 2d 917).

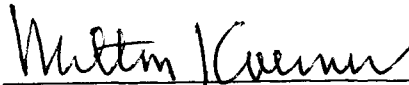
(4)


B. That the petition of Paul Gilbert, Jr. and Jane M. Gilbert is denied and the Notice of Deficiency issued June 24, 1974, is sustained.

DATED: Albany, New York
November 23, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER