

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STEWART and ALICE SCHACKNE

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

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated Business Tax
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) 1967, 1968, 1969
and 1970.

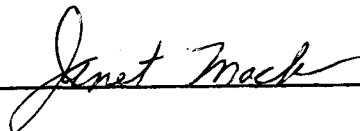
State of New York
County of Albany

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 20th day of April, 1976, she served the within
Notice of Decision (~~xx-Decision-xx~~) by (certified) mail upon Stewart and
Alice Schackne (~~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. Stewart Schackne
Reservoir Road
Lakeville, 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~~
~~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

20th day of April, 1976.



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STEWART and ALICE SCHACKNE

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 & 23 of the
Tax Law for the Year(s) 1967, 1968, :
1969 and 1970.

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 20th day of April, 1976, she served the within
Notice of Decision (~~on Determination~~) by (certified) mail upon David Baumgarten, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: David Baumgarten, Esq.
10 East 40th Street
New York, New York 10016

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

20th day of April, 1976.



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York

April 20, 1976

Mr. & Mrs. Stewart Schackne
Reservoir Road
Lakeville, Connecticut

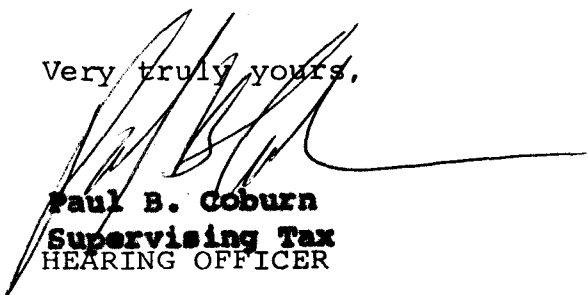
Dear Mr. & Mrs. Schackne:

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
Supervising Tax
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
STEWART and ALICE SCHACKNE	:	
for a Redetermination of a Deficiency	:	DECISION
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1967, 1968, 1969 and 1970.	:	

In the Matter of the Petition	:	
of	:	
STEWART SCHACKNE	:	
for a Redetermination of a Deficiency	:	DECISION
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967, 1968, 1969 and 1970.	:	

Stewart and Alice M. Schackne, Reservoir Road, Lakeville, Connecticut, filed a petition under section 689 of the Tax Law for a redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the years 1967, 1968, 1969 and 1970.

Said deficiency was asserted by notice issued April 12, 1974, under File No. 0-52021162 and is in the amount of \$14,358.27 plus interest of \$3,817.01 for a total of \$18,175.28.

Stewart Schackne filed a petition under sections 689 and 722 of the Tax Law for the redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the years 1967, 1968, 1969 and 1970.

Said deficiency was asserted by notice issued April 12, 1974, under File No. 0-52021162 and is in the amount of \$2,595.41 plus interest of \$702.01 for a total of \$3,297.42.

A hearing was duly held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner is represented by David Baumgarten, Esq. The Income Tax Bureau is represented by Saul Heckelman, Esq., appearing by James A. Scott, Esq.

The record of said hearing has been duly examined and considered.

ISSUES

The issues in this case are:

- I. The validity of deficiency notices issued over three years after the taxable years involved.
- II. Whether petitioners had changed their domicile from New York to Connecticut prior to 1967, and whether they, nevertheless, remained statutory residents of New York thereafter.
- III. The proper method of allocating business income between states.
- IV. The propriety of deductions for rent.

FINDINGS OF FACT

1. Mr. Schackne was born and raised in Toledo, Ohio. He went to college at Dartmouth in New Hampshire. He worked in the field of public relations. Around 1945, he became employed by Standard Oil of New Jersey in the Public Relations Department in New York City. He later became head of that department.

2. At some time prior to 1960, Mr. Schackne had leased an apartment at 80 East End Avenue, New York City. He had done this after his divorce from his first wife. This was a four or five room apartment. He has continued to lease this apartment throughout the years in question.

3. In January, 1964, when he was 59 years old, Mr. Schackne left Standard Oil. He had shortly before married his second wife, a petitioner herein. She had been his secretary at Standard Oil.

4. In July, 1963, petitioners purchased a home in the town of Sharon, Lichfield County, Connecticut. This is a substantial house on a one acre parcel of land. In 1963 and 1964, petitioners moved into the Sharon home and were certified as voting residents in December, 1964. They purchased all new furniture for this house. This house is ninety miles from New York City. They sold that house in 1970. Later in 1970, petitioners built a house in Lakeville, Connecticut, and moved there. For a few months before completion they lived in an apartment house in Lakeville.

5. Petitioners filed New York nonresident personal income tax returns for each year in question.. Such returns were timely filed.

Mr. Schackne filed New York unincorporated business tax returns for each year in question. Such returns were timely filed.

6. Mr. Schackne continued after his retirement to work in the public relations field. His one principal client was the American Society of Certified Public Accountants. This business involved the editing and writing of speeches and press releases. Mr. Schackne engaged in this business at both his Sharon, Connecticut, residence and at the New York City apartment. His letterhead shows both addressed. His wife served as his secretary accompanying him on some trips as well as working in the Sharon home and the New York City apartment. She, however, drew no salary.

7. On his returns for unincorporated business tax, Mr. Schackne allocated his income by the three-factor formula method, in all but one year, however, omitting the salaries ratio. He arrived at the following allocation ratios: 1967, 39.66%; 1968, 41.96%; 1969, 68.9%; 1970, 59.16%.

8. Mr. Schackne has made an estimate of his business activity during the years in question and has submitted schedules showing his physical presence by number of days in various locations. These figures show that, ignoring Saturdays and Sundays, about 60% to 65% of his time spent in New York, 10% to 20% of his time spent in traveling to places other than New York or Connecticut and 25% of his time spent in Connecticut. The exact ratios of

days worked in New York to total days worked in each year are:
1967, 149/261; 1968, 158/262; 1969, 164/261; 1970, 162/261.

Neither Mr. Schackne nor the Income Tax Bureau agree that one method of allocations is superior to the other.

9. The petitions were audited by the Federal Internal Revenue Service which disallowed business deductions for garage rent, apartment rent and office and studio cleaning as not being ordinary and necessary expenses of the business. Petitioner accepted a settlement of that controversy allowing 50% of such expenses as deductions.

10. The petitioner to avoid problems of proof now agrees to the disallowance of deductions for auto expense, entertainment and depreciation.

CONCLUSIONS OF LAW

A. The deficiency notice with respect to 1967, 1968 and 1969 personal income taxes was not timely issued. The deficiency notice with respect to the 1967, 1968 and 1969 unincorporated business tax was not timely issued. Such notices are not valid.

B. There is no doubt that petitioners changed their domicile to Connecticut prior to 1967. Furthermore, even if thereafter they maintained the New York apartment partly as an abode, there is no indication that they spent more than 183 days in New York in any one year. They are, therefore, nonresidents of New York.

C. Mr. Schackne as an independent contractor is entitled to allocate his income between his offices in New York and Connecticut.

Probably the better method of allocation in this case is by days worked inside and outside the state.


D. Petitioners are entitled to some deductions for the rents and cleaning expenses of the New York City apartment, and the Commission may estimate such expenses. In the absence of specific evidence in the record, the 50% figure accepted by the Internal Revenue Service will be accepted here.

DECISION

The deficiencies for both personal income tax and unincorporated business tax are erroneous in part. Such deficiencies are cancelled with respect to 1967, 1968 and 1969. For 1970 such deficiencies are erroneous only in part and are recomputed to reflect the allocation as found in paragraph C and the rental expense as found in paragraph D. The recomputed deficiency for personal income tax amounts to \$118.64 plus interest to the date thereof of \$21.31 for a total of \$139.95.

The recomputed deficiency for unincorporated business tax amounts to \$144.31 plus interest to the date thereof of \$25.92 for a total of \$170.23. These amounts shall bear such additional interest as computed under section 684 of the Tax Law.

DATED: Albany, New York
April 20, 1976

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER