STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROSS C. & LEONA S. CASTAGNA

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)~~ 1971.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor, 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 25th day of January, 1977, she served the within Notice of Decision by (certified) mail upon Ross C. & Leona S. Castagna ~~(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. Ross C. Castagna
79 Northwood Lane
Stamford, Connecticut 06903

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
25th day of January, 1977.

Bruce Batchelor

Janet Tack

TA-3 (2/76)

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

January 25, 1977

TELEPHONE: (518) 457-1723

Mr. and Mrs. Ross C. Castagna
79 Northwood Lane
Stamford, Connecticut 06903

Dear Mr. and Mrs. Castagna:

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

Please take further notice that pursuant to Section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision 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: [redacted]:

Taxing Bureau's Representative:

TA-1.12 (1/76)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of ROSS C. & LEONA S. CASTAGNA for Redetermination of a Deficiency or for Refund of Personal Income Taxes under Article 22 of the Tax Law for the Year 1971.	DECISION

Petitioners, Ross C. and Leona S. Castagna, residing at 79 Northwood Lane, Stamford, Connecticut 06903, have filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1971. (File No. 1-73146344).

A small claims hearing was held August 16, 1976, at 2:45 P.M. at the Offices of the State Tax Commission, Two World Trade Center, New York, New York, before Harry Huebsch, Hearing Officer. Petitioner, Ross C. Castagna, appeared pro se and for his wife. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq., of counsel).

ISSUE

What portion of the income received by petitioner, Ross C. Castagna, from International Playtex Corporation during the year 1971 was allocable to New York sources?

FINDINGS OF FACT

1. Petitioners, Ross C. and Leona S. Castagna, filed a New York State income tax nonresident return for the year 1971. They allocated the salary income received from International Playtex Corporation by petitioner, Ross C. Castagna, based upon the number of alleged days he worked within and without New York State during said year. They claimed on the return that petitioner, Ross C. Castagna, worked a total of 194 days during the year 1971, of which 160 days were worked outside of New York State and 34 days were worked in New York State.

2. The Income Tax Bureau held that days worked at home were not a proper basis for allocation of salary income and the days worked outside of New York were therefore changed from 160 to 122. The 34 days claimed worked in New York were increased to 77. A Notice of Deficiency was issued dated May 20, 1974 in the amount of $166.59 additional tax due, plus $20.96 interest for a total sum of $187.55.

3. In 1971 petitioner, Ross C. Castagna, a resident of Connecticut, was employed by International Playtex Corporation in the New York Office. He was employed by said corporation as their national manager of sales with approximately 40 salesmen throughout the country under his supervision.

4. Petitioner, Ross C. Castagna, was under the supervision of the New York office of International Playtex Corporation.

He maintained a minor office in his home where he worked on reports from salesmen and also prepared his own reports and programs.

5. A schedule prepared by petitioner, Ross C. Castagna, indicating where he worked each day during 1971 clearly shows that 122 days were worked outside of New York and that these days included days worked in Connecticut. It also separately shows 34 days worked in New York and 41 days worked at home.

6. Petitioner, Ross C. Castagna, contended that he considers that a working day in which he is not physically present in New York as a day not worked in New York. He also contended that the work performed at the office in his Connecticut home was performed there out of necessity and not merely for his own convenience.

CONCLUSIONS OF LAW

A. That the 41 days worked at home in Connecticut during the year 1971 by petitioner, Ross C. Castagna, were days worked there by reason of his own necessity and convenience and not for the necessity of his New York employer. 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.

B. That the Income Tax Bureau is directed to correct the allocation formula from 77/197 x $29,424.38 to 75/197 x $29,424.38.

C. That the petition of Ross C. Castagna is granted only to the extent of correcting the allocation formula as shown in B above and is denied in all other respects, and the Notice of Deficiency as revised by the correction of the allocation formula is sustained.

DATED: Albany, New York
January 25, 1977

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER