

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JULIUS and ETHEL GREEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (8) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1967, 1968 and 1969.

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 Julius & Ethel Green

~~(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. & Mrs. Julius Green
Claridge House #1002
Verona, New Jersey 07044

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)~~
~~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 Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
JULIUS and ETHEL GREEN : AFFIDAVIT OF MAILING
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (22) of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1967, 1968 and 1969.

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of January , 1977, he served the within
Notice of Decision by (certified) mail upon Martin Wm. Wallace
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Martin Wm. Wallace, CPA
Biller & Snyder
75 Maiden Lane
New York, New York 10038
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 Trach



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. & Mrs. Julius Green
Claridge House #1002
Verona, New Jersey 07044


Dear Mr. & Mrs. Green:

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

Please take further notice that pursuant to
Section(**x**) **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
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JULIUS AND ETHEL GREEN :
for Redetermination of a Deficiency :
or for Refund of Personal Income :
Taxes under Article 22 of the Tax :
Law for the Years 1967, 1968 and 1969. :
:

Petitioners, Julius and Ethel Green, residing at the Claridge House #1002, Verona, New Jersey 07044, 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 years 1967, 1968 and 1969. (File No. 9-33412031).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on July 12, 1976 at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Martin Wallace. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irving A. Levy, Esq. of counsel).

ISSUE

Was petitioner, Julius Green, a partner of the firm of Biller and Snyder during the years 1967, 1968 and 1969 and thereby required to include his distributive share of partnership income in computing his New York adjusted gross income for such years or was petitioner an employee of such firm and thereby permitted to allocate his income for New York State income tax purposes for the years in question

on the basis of the number of days he worked within and without New York State during such years?

FINDINGS OF FACT

1. The petitioners, Julius and Ethel Green, filed joint New York State income tax nonresident returns for the years 1967, 1968 and 1969 on which petitioner, Julius Green, allocated the compensation he received from the firm, Biller and Snyder, on the basis of the number of days worked within and without of New York State.

2. The Income Tax Bureau issued a Statement of Audit Changes for the years 1967 and 1968 and another Statement of Audit Changes for the year 1969 imposing additional personal income tax on petitioners for such years on the basis that the distributive share of Julius Green in partnership income from the firm of Biller and Snyder was taxable for personal income tax purposes rather than the allocated compensation reported. In accordance with the aforesaid statements, a Notice of Deficiency was issued in the sum of \$1,649.74 on May 22, 1972 for the years 1967 and 1968 and another Notice of Deficiency was issued in the sum of \$712.54 on December 18, 1972 for the year 1969.

3. In 1943, the petitioner, Julius Green, became an employee of the firm of Biller and Snyder, Certified Public Accountants, and received a salary from which payroll taxes were withheld.

4. In November of 1962, the petitioner entered into an agreement with the firm of Biller and Snyder, which stipulated that he was being admitted into the firm as a junior partner; that his total

interest in the partnership was limited to a fixed annual salary, payable weekly, and a percentage of gross fees received from certain clients; that he had no financial interest in the earnings or profits of the partnership; that he had no interest in the partnership's business affairs, clients or assets; and that he was not "chargeable" with any of the losses or debts of the firm.

5. In addition, the agreement restricted the petitioner's activities in the firm only to the extent specifically authorized by the senior partners and restricted him from participating in similar business activities outside the partnership.

6. Although the petitioner considered himself an employee of the firm, he held himself out to the public as a partner and his compensation was not subjected to the withholding of payroll taxes.

CONCLUSIONS OF LAW

A. That the petitioner, Julius Green, was not a partner or a member of the partnership of Biller and Snyder during 1967, 1968 and 1969. Therefore, section 632(a)(1)(A) and section 637 of the Tax Law do not apply.

B. That the petitioner, Julius Green, received compensation as an employee of the firm of Biller and Snyder for services performed both within and without New York State during 1967, 1968

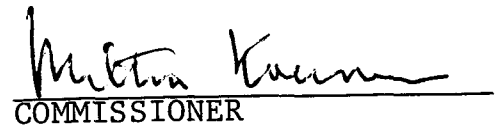
and 1969 and he correctly allocated the income shown on his 1967, 1968 and 1969 nonresident New York returns in accordance with the meaning and intent of 20 NYCRR 131.16.


C. That the petition of Julius and Ethel Green is granted and the Notices of Deficiency issued on May 22, 1972 and December 18, 1972 are cancelled.

DATED: Albany, New York
January 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER