

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS C. & ANNAMARIE L. HAND

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)~~ :  
1968, 1969 & 1970.

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 4th day of March , 1977, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Francis C. &  
Annamarie L. Hand ~~(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. Francis C. Hand  
21 Roosevelt Road  
Maplewood, New Jersey 07040

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

4th day of March , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 4, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Francis C. Hand  
21 Roosevelt Road  
Maplewood, New Jersey 07040

Dear Mr. & Mrs. Hand:

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: ~~Taxing Bureau's Representative~~

Taxing Bureau's Representative:

## STATE TAX COMMISSION

Petitioners, Francis C. and Annamarie L. Hand, residing at 21 Roosevelt Road, Maplewood, New Jersey 07040, filed a petition for a redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968, 1969 and 1970. (File Nos. 8-13108459 and 0-53240147). A small claims hearing was held on July 16, 1976 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, Room 65-31, New York, New York 10047, before Joseph Marcus, Hearing Officer. The petitioner appeared pro se and for his wife, Annamarie L. Hand. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

I. Which method of allocation or apportionment may the petitioner properly use in determining the amount of his personal service compensation attributable to New York sources for the years 1968, 1969 and 1970?

II. Were the days on which the petitioner worked at his home in New Jersey in such years considered to be days worked outside New York State for purposes of allocation of his personal service compensation for such years?

FINDINGS OF FACT

1. Petitioners, Francis C. and Annamarie L. Hand, filed New York State income tax returns, IT-203's, for the years 1968, 1969 and 1970. They allocated the income received by the petitioner, Francis C. Hand, based on an estimate of the days worked within and without New York State. Petitioner included in the time allocated to out-of-state work time worked at his home in New Jersey.

2. On November 24, 1975, the Income Tax Bureau issued a Statement of Audit Changes relating to the petitioner's income tax return for 1968. Petitioner had agreed to extend the time for assessment on the aforementioned tax return to one year from the date of the final decision on his 1967 tax return by the Appellate Division of the Supreme Court of the State of New York. The court decision was dated and entered on July 22, 1975. The Income Tax Bureau issued a Notice of Deficiency on November 24, 1975. (File No. 8-13108459).

3. The Income Tax Bureau issued a Statement of Audit Changes on February 26, 1973, relative to the years 1969 and 1970, and a Notice of Deficiency for 1969 and 1970 on the same date. (File No. 0-53240147).

4. The Statement of Audit Changes and Notice of Deficiency relating thereto for the year 1968 was issued and based on the above referenced decision of the Supreme Court.

5. Petitioner, Francis C. Hand, filed timely petitions for the years under review for redetermination of the deficiencies.

6. The petitioner and his wife were residents of the State of New Jersey during the years 1968, 1969 and 1970.

7. The petitioner is a patent attorney. He received the degree of Bachelor of Civil Engineering from Manhattan College, and Doctor of Laws, from Georgetown University. He was admitted to practice before the United States Patent Office, the court of the State of New York, and various courts of the United States.

8. On January 1, 1967, by written agreement, the petitioner became an "Associate" of the law firm of Kenyon & Kenyon, "a partnership having an office for the practice of law" in New York City. The agreement measured compensation based on a percentage participation in the fees collected by the firm from clients obtained and/or serviced by the petitioner, or a guaranteed annual salary of \$12,000.00, whichever was greater. On January 1, 1969, the "Guaranteed Yearly Minimum" was increased to \$15,000.00.

9. On July 16, 1976, petitioner submitted excerpts from his diaries which indicated the days worked outside of New York State during the years 1968, 1969 and 1970, at locations other than his home. Most of the days worked outside New York State were days assigned to visiting clients in the United States Patent Office in Washington.

10. The Income Tax Bureau conceded that petitioner was an employee of the law firm.

CONCLUSIONS OF LAW

A. That personal service compensation received by petitioner, Francis C. Hand, in the years 1968, 1969 and 1970 did not depend directly on the volume of business transacted by him within the meaning and intent of 20 NYCRR 131.15. Therefore, he may not allocate such compensation to New York sources under the method of allocation provided by section 131.15.

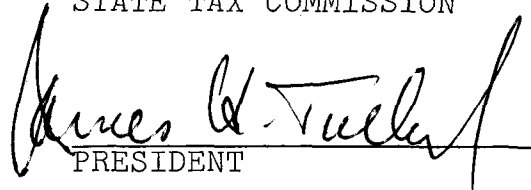
B. That the personal service compensation received by the petitioner for the years in question for services performed both within and without New York State is properly allocable to New York sources in accordance with the provisions of 20 NYCRR 131.16.

C. That the days worked by the petitioner at his home in New Jersey during 1968, 1969 and 1970 were worked there by reason of his necessity and convenience and not for the necessity of his employer and therefore said days must be held to be days worked within New York State within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

D. That the Income Tax Bureau is directed to recompute the petitioner's corrected deficiency of personal income tax for the years 1968, 1969 and 1970 and to determine the earnings of the petitioner allocable to New York sources by allocating such earnings in accordance with the provisions of 20 NYCRR 131.16. Allowance is to be made in the recomputation for 11 days worked outside New York State in 1968, 19 days in 1969 and 11 days in 1970. The total number of working days to be used in the recomputation is 228 days for 1968, 255 days for 1969 and 241 days for 1970. Except as provided herein, the petition is in all other respects denied.

DATED: Albany, New York  
March 4, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER