

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT G. and FLORENCE HAVEMEYER

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

AFFIDAVIT OF MAILING

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 14th day of January, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Robert G. & Florence
Havemeyer ~~(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. Robert G. Havemeyer
16 Prince Place
Stamford, Connecticut 06905

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)~~
~~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

14th day of January, 1977.

Bruce Batchelor

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

January 14, 1977

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

Mr. & Mrs. Robert G. Havemeyer
16 Prince Place
Stamford, Connecticut 06905

Dear Mr. & Mrs. Havemeyer:

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: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT G. and FLORENCE HAVEMEYER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1967.	:	

Petitioners, Robert G. and Florence Havemeyer, 16 Prince Place, Stamford, Connecticut 06905, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1967. (File No. 89122185). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 26, 1976 at 9:15 A.M. Petitioner, Robert G. Havemeyer, appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUE

Did the petitioner, Robert G. Havemeyer, properly allocate to New York State commission income received from his employer during 1967?

FINDINGS OF FACT

1. Petitioners, Robert G. and Florence W. Havemeyer, filed a joint New York State income tax nonresident return for 1967 on which a refund was claimed in the amount of \$392.31. The allocated the salary income of \$21,000.00 received by petitioner, Robert G. Havemeyer, from Case and Company, Inc. based upon the number of days he alleged to have worked within and without New York State during 1967. They claimed to have worked a total of 235 days during the year of which 146 days were worked in New York State. In addition to the salary income received by the petitioner, he also received commission income.

2. Petitioner, Robert G. Havemeyer, also received commission income of \$11,328.13 from his employer. He allocated this income on the basis of services performed for clients within and without New York State.

3. On September 1, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Robert G. Havemeyer and Florence W. Havemeyer, denying the refund as claimed on the return and imposing an additional personal income tax for 1967 in the sum of \$148.72, upon the grounds that the commission income received by the petitioner must be allocated on the basis of days he worked within and without New York State. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency. The petitioners paid the deficiency and accrued interest for the sum total of \$174.75 on September 8, 1971.

4. Petitioners, Robert G. and Florence W. Havemeyer, were residents of the State of Connecticut during 1967.

5. Petitioner, Robert G. Havemeyer, was employed as a Management Consultant by Case and Company, 600 Fifth Avenue, New York, New York. In this capacity, he supervised several subordinate consultants. In the course of his duties as an employee, he frequently renders his services and the services of his subordinates to clients located outside New York State. In the performance of his duties, the petitioner may visit the client's location, set up a program for his staff and leave them to complete the work on their own. In other cases, he may be at the client's location for the duration of the project or he may not visit the project at all. For these duties, the petitioner earns a commission on the fees Case and Company, Inc. bill to their customers. These fees charged by Case and Company, Inc. are based on the time expended by the petitioner as well as the time of his subordinates. So in some instances, he may receive a commission even though he was not physically present at the job site.

6. Petitioner, Robert G. Havemeyer, received per diem allowances to cover expenses incurred during travel in the sum of \$2,400.00 during 1967. His actual expenses in connection with this travel were \$1,070.84 leaving an excess travel allowance of \$1,329.16 as additional miscellaneous income.

7. Petitioner, Robert C. Havemeyer, contends that the commission income received by him depends directly upon the volume of business transacted by him and that he should include only those commissions attributable to New York State sources.

CONCLUSIONS OF LAW

A. That the commission income received by petitioner, Robert G. Havemeyer, did not depend directly upon the volume of business transacted by him, (20 NYCRR 131.15) but rather by the volume of business transacted by his employer, himself and his subordinates.

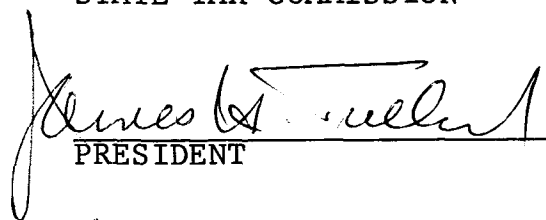
B. That the commission income of \$11,328.13 received by petitioner, Robert G. Havemeyer, during 1967 is to be allocated on the basis of the portion of the total number of working days that the petitioner was employed within the State (146 out of 235), in accordance with section 632(c) of the Tax Law and 20 NYCRR 131.16.

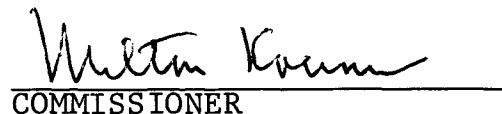
C. That the excess travel allowance of \$1,329.16 received by petitioner, Robert G. Havemeyer, is additional income also to be allocated on the basis of the portion of the total number of working days that the petitioner was employed within the State (146 out of 235), in accordance with section 632(c) of the Tax Law and 20 NYCRR 131.16.

D. That the petition of Robert G. and Florence W. Havemeyer, is granted to the extent that a refund is due the petitioner in the amount of \$164.01, together with such interest as may be lawfully owing; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
January 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER