

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

REGINALD ROSE and ELLEN ROSE

AFFIDAVIT OF MAILING

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 ~~(Sponsor Period)~~ 1967.:
:

State of New York
County of Albany

Marsina Donnini, 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 22nd day of July, 1977, she served the within Notice of Decision by ~~(certified)~~ mail upon Reginald Rose & Ellen Rose ~~(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. Reginald Rose
30 Kingston House North
Princes Gate
London S.W. 7, England
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

22nd day of July, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

REGINALD ROSE and ELLEN ROSE

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)~~ 22 of the :
Tax Law for the Year ~~(1967)~~ 1967. :

State of New York
County of Albany

Marsina Donnini, 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 22nd day of July, 1977, she served the within
Notice of Decision by (certified) mail upon Kenneth A. Lapatine

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Kenneth A. Lapatine, Esq.
Carro, Spanbock, Londin, Rodman & Fass
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 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

22nd day of July, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

REGINALD ROSE and ELLEN ROSE

AFFIDAVIT OF MAILING

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)~~ ~~or Period(s)~~ 1967. :

State of New York
County of Albany

Marsina Donnini, 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 22nd day of July, 1977, she served the within Notice of Decision by (certified) mail upon Philip Plumer (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Philip Plumer
David W. Katz & Company
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 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

22nd day of July, 1977.

Marsina Donnini

Janet MacL



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

July 22, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Mr. & Mrs. Reginald Rose
30 Kingston House North
Princes Gate
London S.W. 7, England**

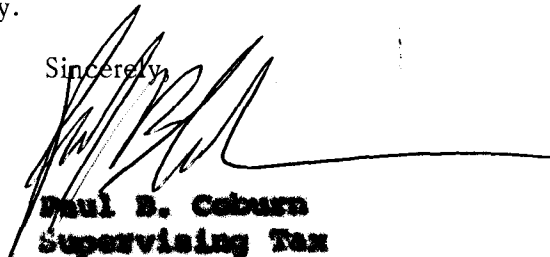
Dear Mr. & Mrs. Rose:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


**Paul B. Coburn
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
REGINALD ROSE and ELLEN ROSE	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1967	:	
	:	

Petitioners, Reginald Rose and Ellen Rose, 30 Kingston House North, Princes Gate, London S. W. 7, England, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1967 (File No. 01244).

A formal hearing was held before, Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on June 19, 1973 at 2:45 P.M. Petitioners appeared by Philip Plumer and Kenneth A. Lapataine, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of counsel).

ISSUE

Whether days worked at home in Connecticut by petitioners, Reginald Rose and Ellen Rose, produced income allocable to sources outside New York State in the year 1967.

FINDINGS OF FACT

1. Petitioners, Reginald Rose and Ellen Rose, filed a Form IT-209 (New York State combined income tax return for non-resident married persons filing a joint Federal and electing to file separate New York State returns) for the year 1967. They listed Federal income from wages as \$9,379.00, of which \$3,399.00 was allocated to Reginald Rose in New York State and \$2,990.00 was allocated to Ellen Rose in New York State. They listed business income on the Federal returns as \$118,873.45. A withholding statement attached to the return listed \$110,000.00 in wages paid subject to withholding from Defender Productions, Inc.

2. On November 30, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Reginald Rose, imposing additional personal income tax for the year 1967 of \$3,903.89, plus \$614.71 in interest, upon the grounds that adjustments were made per a Federal audit and that time spent at a taxpayer's home is not recognized as a proper basis for allocation of income from salaries and wages. Accordingly, a Notice of Deficiency was issued totalling \$4,518.60. He is not contesting the adjustments made as per a Federal audit.

3. On November 30, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Ellen Rose, imposing additional personal income tax for the year 1967 of \$166.50,

plus \$26.22 in interest, upon the grounds that, adjustments were made to conform to a Federal audit and that time spent at taxpayer's home is not recognized as a proper basis for allocation of income from salaries and wages. Therefore, the \$5,980.00 received by her from Defender Productions, Inc. in 1967 was entirely taxable to New York State. Accordingly, a Notice of Deficiency was issued totalling \$192.72. She is not contesting the adjustments made as per a Federal audit.

4. Petitioners, Reginald Rose and Ellen Rose, were residents of Connecticut in 1967.

5. Petitioner, Reginald Rose, was the chief executive officer of Defender Productions, Inc. of New York, New York, during the year 1967. Petitioner also developed and wrote script packages for various television series for his employer, Defender Productions, Inc. Most of the aforementioned work was performed at petitioner's home in Connecticut. The company had been incorporated in New York State on October 18, 1960.

6. Petitioner, Ellen Rose, worked as an assistant to Reginald Rose for Defender Productions, Inc., in their Connecticut home.

7. Defender Productions, Inc. owned the home in Connecticut referred to in Findings of Fact "4" and "5", supra. Defender

Productions, Inc. did not file a certificate of doing business in Connecticut in 1967. Defender Productions, Inc. owned a co-operative apartment at 36 Sutton Place, New York, New York during 1967.

8. Petitioner, Reginald Rose, was reimbursed by Defender Productions, Inc. for several business luncheons for each month of 1967. These lunches were all in New York, New York.

9. Defender Productions, Inc. listed its address as 10 East 40th Street, New York, New York, on its New York State Corporation Franchise Tax Reports for the years ending April 30, 1967 and April 30, 1968. All corporate income on those returns was allocated to New York State. The returns did not indicate any out of state offices.

10. Defender Productions, Inc. had several other employees in 1967 and no evidence was offered as to where they worked.

11. No documentary or other substantial evidence was offered that an office could not be set up for petitioners, Reginald Rose and Ellen Rose, in New York State, nor that petitioners were required to work outside New York State by their employer, Defender Productions, Inc. in 1967.

CONCLUSIONS OF LAW

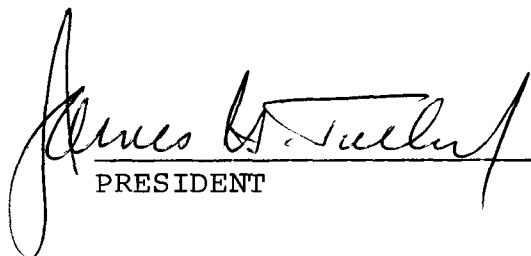
A. That since the days worked at home in Connecticut by petitioners, Reginald Rose and Ellen Rose, in 1967 were for their convenience as opposed to the actual necessity of their employer,

therefore, the income so produced was entirely allocable to New York State within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.16.

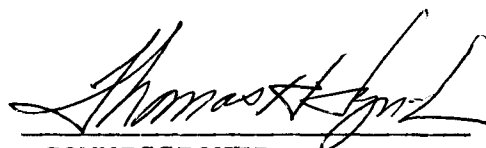
B. That the petitions of Reginald Rose and Ellen Rose are denied and the notices of deficiency issued November 30, 1970 are sustained.

DATED: Albany, New York
July 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER