

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL T. and FLORENCE SHANAHAN

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 (x) 1972. :
~~(x) or Part (x)~~

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 4th day of March , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Michael T. & Florence
Shanahan ~~(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. Michael T. Shanahan
44 Circle Drive
Park Ridge, New Jersey 07656
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)~~
~~(x) or (x)~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of)~~ 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. Michael T. Shanahan
44 Circle Drive
Park Ridge, New Jersey 07656

Dear Mr. & Mrs. Shanahan:

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

Please take further notice that pursuant to
Section ~~(a)~~ **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 OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL T. AND FLORENCE SHANAHAN

DECISION

for Redetermination of a Deficiency or
for Refund of Personal Income Taxes
under Article 22 of the Tax Law for the
Year 1972.

Petitioners, Michael T. and Florence Shanahan, residing at 44 Circle Drive, Park Ridge, New Jersey 07656, 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 1972 (File No. 2-23082015).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on August 18, 1976 at 2:45 p.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se and for his wife, petitioner, Florence Shanahan. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq. of counsel).

ISSUE

Whether days worked at home in New Jersey by petitioner, Michael T. Shanahan, during 1972 can be considered to be days worked outside New York State in determining the portion of petitioner's 1972 wages allocable to New York sources.

FINDINGS OF FACT

1. Petitioners, Michael T. and Florence Shanahan, timely filed a New York State nonresident return for the year 1972. They allocated the income received by petitioner, Michael T. Shanahan, upon the days worked within and without New York State. Petitioner, Michael T. Shanahan, claimed on said allocation 174 days as days worked outside New York State.

2. On March 31, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners, Michael T. and Florence Shanahan, disallowing the allocation of petitioner, Michael T. Shanahan's income upon the grounds that work time spent at home for the convenience of the employer or employee is not a proper basis for allocation of wages outside New York State. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$1,537.00.

3. Petitioners, Michael T. and Florence Shanahan, were residents of the State of New Jersey during the year 1972.

4. Petitioner, Michael T. Shanahan, was employed by Oxford Drapery Company as a sales representative. The above said company is located in Boston, Massachusetts; however, the firm does maintain a showroom in New York; said firm does provide secretarial help and office space for its salesman in the New York showroom.

5. Petitioner, Michael T. Shanahan, does maintain an office in his home in New Jersey. He was not reimbursed for any home office expenses he might incur such as telephone expense. The nature of his sales demanded very detailed proposals and presentations, which were prepared in the office at his home. He also received correspondence, orders and merchandise samples at his office in his home.

6. Petitioner, Michael T. Shanahan, submitted a schedule of days worked outside New York State which was not contested by the Income Tax Bureau. The schedule showed that the petitioner, Michael T. Shanahan, had worked 175 days outside of New York during the year 1972. Of the 175 days claimed worked outside of New York, 128 days were days worked at his office in his home. The other 47 days were worked outside New York State other than at his home office.

CONCLUSIONS OF LAW

A. That the 128 days worked at home in New Jersey by petitioner, Michael T. Shanahan, during the year 1972 were worked there by reason of his necessity and convenience and not for the necessity of his employer and therefore said time cannot be considered to be days worked outside of New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

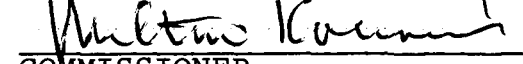
B. That the 47 days worked outside New York State other than at the petitioner's home during the year 1972 are to be considered as days worked outside of New York State.

C. That the petition of Michael T. and Florence E. Shanahan is granted to the extent of allowing the allocation of the 1972 wages of Michael T. Shanahan on the basis of 181 days worked within New York State and 228 total working days; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued March 31, 1975, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
March 4, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER