

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK N. SPENCER, JR.

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)xxx Period(x)~~ 1970:

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~she~~ 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, ~~she~~ served the within
Notice of Decision by (certified) mail upon Frank N. Spencer, Jr.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Frank N. Spencer, Jr.
Cornwall Bridge Road
Sharon, Connecticut 06069

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

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. Frank N. Spencer, Jr.
Cornwall Bridge Road
Sharon, Connecticut 06069

Dear Mr. Spencer:

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~~
~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK N. SPENCER, JR.	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1970.	:	

Petitioner, Frank N. Spencer, Jr., residing at Cornwall Bridge Road, Sharon, Connecticut 06069, 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 1970. (File No. 0-69175386). On September 8, 1976, petitioner, Frank N. Spencer, Jr., advised the State Tax Commission in writing that he desired to waive a small claims hearing and to submit the case to the State Tax Commission upon the entire record contained in the file.

ISSUES

I. Did petitioner, Frank N. Spencer, Jr., a nonresident, perform services for Cerro Corporation during 1970 as an employee or as an independent contractor?

II. Were days worked in Connecticut performing services for Cerro Corporation considered days worked in New York or days worked outside of New York for purposes of allocation of income?

FINDINGS OF FACT

1. Petitioner, Frank N. Spencer, Jr., filed a 1970 New York State personal income nonresident return attached to which was a wage and tax statement from a New York corporation showing New York State taxes withheld from compensation. On the return, petitioner, Frank N. Spencer, Jr., allocated his income in Schedule A-1. He claimed 285 days worked in 1970, of which 233 were worked out of New York and 52 worked in New York.

2. The Income Tax Bureau held that from January 1, 1970 to March 31, 1970, petitioner, Frank N. Spencer, Jr., worked as a full-time employee for Cerro Corporation and, for this period, it allocated 54 of the total 63 days worked as days worked in New York and nine days as worked outside of New York. For the balance of the year, April 1, 1970 to December 31, 1970, the Income Tax Bureau held that petitioner, Frank N. Spencer, Jr., worked one-third of this period for Cerro Corporation as an employee and allocated 42 of the total 57 days worked as days worked in New York. A Notice of Deficiency dated July 30, 1973 was issued for \$266.86 additional personal income tax due, plus \$36.68 interest, for a sum of \$303.54.

3. Petitioner, Frank N. Spencer, Jr., was a resident of Connecticut in the year 1970. On November 25, 1969, his job title was changed and he entered into a written agreement with his employer, Cerro Corporation. This agreement set forth his new job title, changes in working time, changes in salary and provided for continuation of employee benefits. On October 13, 1970, a supplement to this agreement was agreed to and signed by petitioner, Frank N. Spencer, Jr. This supplement provided that after April 1, 1970, petitioner would work one-third of each month for Cerro Corporation and could work for other employers only when not working for Cerro. Also, petitioner, Frank N. Spencer, Jr., would be provided office space and secretarial services when work was performed at Cerro Corporation's office. Petitioner, Frank N. Spencer, Jr., could work for Cerro Corporation in Connecticut when such work could be conveniently and effectively performed there. Other provisions of the supplement provided for reimbursement of expenses incurred and accountability as to time worked for Cerro Corporation. The supplement stated that petitioner, Frank N. Spencer, Jr., was considered an employee of Cerro Corporation.

CONCLUSIONS OF LAW

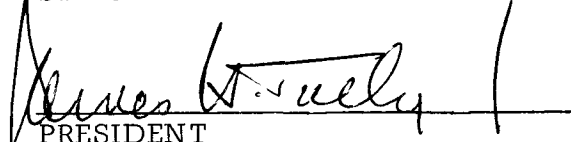
A. That petitioner, Frank N. Spencer, Jr., was an employee of Cerro Corporation in 1970 and not an independent contractor in accordance with the meaning and intent of section 703(b) of the Tax Law.


B. That days worked by petitioner, Frank N. Spencer, Jr., in Connecticut for Cerro Corporation during the year 1970 were worked there because of his own convenience and necessity and not for the necessity of his employer; and therefore, said days must be held to be days worked within New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

C. That the petition of Frank N. Spencer, Jr., is denied and the Notice of Deficiency issued July 30, 1973, is sustained.

DATED: Albany, New York
March 4, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER