

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
DONALD R. WHEELER :  
and :  
LINDA C. WHEELER :  
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) ~~xxxxxx~~ :  
1969, 1970, 1971, 1972 and 1973.

AFFIDAVIT OF MAILING

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 26th day of August , 1977, she served the within  
Notice of Decision by (certified) mail upon Jerome R. Rosenberg

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Jerome R. Rosenberg, Esq.  
50 Park Avenue  
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

26th day of August , 1977.

Marsina Donnini

Janet M. [Signature]

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
DONALD R. WHEELER  
and  
LINDA C. WHEELER  
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) ~~xxxxxx~~ :  
1969, 1970, 1971, 1972 and 1973.

AFFIDAVIT OF MAILING

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 26th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Donald R. & Linda C. Wheeler (~~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. Donald R. Wheeler  
33 Hewlett Road  
Towaco, New Jersey 07082

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~~) (~~xxxxxx~~) petitioner herein and that the address set forth on said wrapper is the last known address of the (~~representative of~~) (~~xxxxxx~~) petitioner.

Sworn to before me this

26th day of August, 1977.

Marsina Donnini

Janet Mack



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

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

August 26, 1977

Mr. & Mrs. Donald R. Wheeler  
33 Hewlett Road  
Towaco, New Jersey 07082

Dear Mr. & Mrs. Wheeler:

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(x) **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

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In the Matter of the Petitions	:	
of	:	
DONALD R. WHEELER	:	
and	:	
LINDA C. WHEELER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1969, 1970, 1971, 1972 and	:	
1973.	:	

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Petitioners, Donald R. Wheeler and Linda C. Wheeler, 33 Hewlett Road, Towaco, New Jersey 07082, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969, 1970, 1971, 1972 and 1973. (File Nos. 16285, 16286 and 16287).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 14, 1977 at 9:30 A.M. Petitioners appeared by Jerome R. Rosenberg, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether days worked by petitioner, Donald R. Wheeler, in his New Jersey home, were allocable as days worked outside New York State in the years 1969, 1970, 1971, 1972 and 1973.

FINDINGS OF FACT

1. Petitioner, Donald R. Wheeler, filed a New York State nonresident income tax return for the year 1969. He listed \$139,622.00 as total Federal income from wages, and allocated \$88,048.00 of it to income derived from New York State sources by deducting income from days worked outside New York State. Some of these deducted days were worked at his home in New Jersey.

2. Petitioners, Donald R. Wheeler and Linda C. Wheeler, filed a New York State nonresident income tax return for the year 1970. They listed \$96,425.00 as total Federal income from wages, and allocated \$60,254.00 of it to New York State by deducting income from days worked outside New York State by Donald R. Wheeler. Some of these deducted days were worked at their home in New Jersey.

3. Petitioners, Donald R. Wheeler and Linda C. Wheeler, filed a New York State nonresident income tax return for the year 1971. They listed \$191,250.00 as total Federal income from wages, and allocated \$118,047.41 of it to New York State by deducting income from days worked outside New York State by Donald R. Wheeler. Some of these deducted days were worked at their home in New Jersey.

4. On December 28, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Donald R. Wheeler and Linda C. Wheeler, imposing additional personal income tax for the years 1969, 1970 and 1971, of \$2,882.46 with \$887.93 in interest,

\$2,104.00 with \$341.12 in interest and \$3,535.62 with \$361.07, respectively. These changes were made upon the grounds that days worked at home are not allocable as days worked outside New York State, unless it is an express requirement of the employer that the work be performed outside New York State. Accordingly, a Notice of Deficiency, less a 1971 overpayment of \$7,071.00 was issued totalling \$2,319.06.

5. Petitioners, Donald R. Wheeler and Linda C. Wheeler, filed a New York State nonresident income tax return for the year 1972. They listed \$150,000.00 as total Federal income from wages, and allocated \$104,081.00 of it to New York State by deducting income from days worked outside New York State by Donald R. Wheeler. Some of these deducted days were worked at their home in New Jersey.

6. On June 4, 1973, the Income Tax Bureau issued a Statement of Refund Adjustment to petitioners, Donald R. Wheeler and Linda C. Wheeler, adjusting their refund for the year 1972 by disallowing days worked at home as not being allocable as income earned outside New York State.

7. Petitioners, Donald R. Wheeler and Linda C. Wheeler, filed a New York State nonresident income tax return for the year 1973. They listed \$130,824.79 as total Federal income from wages, and allocated \$94,561.08 of it to New York State by deducting income from days worked outside New York State by Donald R. Wheeler. Some of these deducted days were worked at their home in New Jersey.

8. On June 17, 1974, the Income Tax Bureau issued a Statement of Refund Adjustment to petitioners, Donald R. Wheeler and Linda C. Wheeler, adjusting their refund for the year 1973 by disallowing days worked at home as not being allocable as income earned outside New York State.

9. Petitioner, Donald R. Wheeler, is an expert in the field of trading, selling and underwriting municipal bonds. He was employed by member firms of the New York Stock Exchange and by dealers in municipal bonds during the period in issue. He was employed by Wilson, White, Inc. from March of 1968 through October of 1969. He took a leave of absence in March of 1969. He was employed by Piper, Jaffrey and Hopwood, Inc. (formerly known as Ebin, Robertson and Co., Inc.) from October of 1969 through July 10, 1970. Thereafter on August 17, 1970, he was employed by Sterling Grace and Co., Inc. Currently, petitioner is president of the Municipal Division of Sterling Grace and Co., Inc.

10. One of the principal duties of petitioner, Donald R. Wheeler, was to give recommendations for trading municipal bonds to customers of his various employers during the period in issue. He had to analyze the listings of all municipal bonds for sale in the United States and select offerings to recommend.

11. Petitioner, Donald R. Wheeler, was required to analyze The Blue List of Current Municipal Offerings published by Standard and Poors, Inc. The Monday issue was the most important one of the week (the Blue List was only published Monday through Friday, except holidays) and by the terms of his employment, petitioner was required to get this list by Special Delivery mail on Saturdays so as to analyze it for business on Monday.

12. There was no documentary or other substantial evidence that an office could not have been set up for petitioner, Donald R. Wheeler, in New York State for his Saturday work. His employer furnished him with an office for the rest of the week, in New York State. Further, there was no contention that the employer required petitioner to do his Saturday analysis of the Blue List outside New York State.

13. Petitioner, Donald R. Wheeler, did the aforementioned Saturday analysis of the Blue List at his home in New Jersey.

#### CONCLUSIONS OF LAW

A. That the days worked at home by petitioner, Donald R. Wheeler, during the years 1969 through 1973 were for his convenience as opposed to the actual necessity of his employer and, therefore, the income derived from said days was not allocable to sources



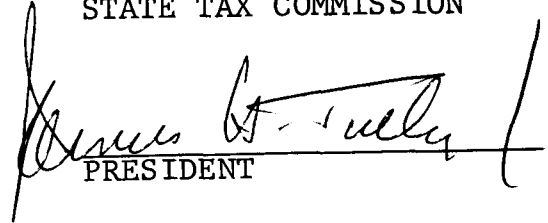
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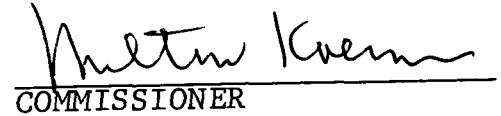
outside New York State within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.16.

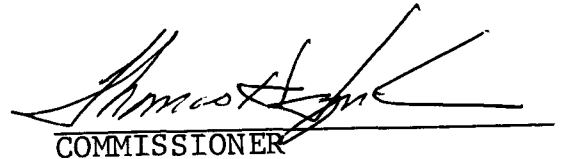
B. That the petitions of Donald R. Wheeler and Linda C. Wheeler are denied.

DATED: Albany, New York  
August 26, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER