

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

LAWRENCE W. & KAREN J. LINDBERG

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) or Period(s) :

1970

State of New York
County of Albany

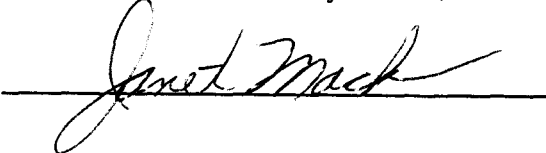
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1978 , she served the within
Notice of Decision by (certified) mail upon Neil H. Millman, Esq.

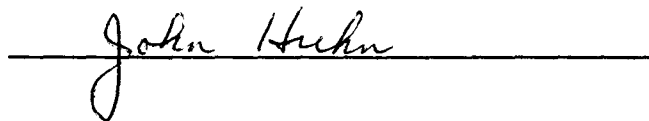
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Neil H. Millman, Esq.
Hecht, Frank, Brayer & Grill Esqs.
1501 Broadway
New York, NY 10036
and by depositing same enclosed in a postpaid properly addressed 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

14th day of February , 1978.







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

February 14, 1978

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

**Lawrence W. & Karen J. Lindberg
91 Central Park West
New York, NY 10023**

Dear Mr. & Mrs. Lindberg:

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,

**Aloysius J. Mendez
Assistant Director**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

LAWRENCE W. LINDBERG AND KAREN J. LINDBERG : DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year 1970.:
:

Petitioners, Lawrence W. Lindberg and Karen J. Lindberg, 91 Central Park West, New York, New York 10023, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970. (File No. 12217).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 18, 1977 at 1:15 P.M. The petitioners appeared by Hecht, Frank, Brayer & Grill, Esqs. (Neil H. Millman, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the petitioner Lawrence W. Lindberg was entitled to an allocation of earnings to sources outside the State of New York for rendering services performed as an employee during the year 1970.

FINDINGS OF FACT

1. During the years 1969 and 1970, the petitioners, Lawrence W. Lindberg and Karen Lindberg, his wife, were residents of the State of Vermont. They filed New York State income tax nonresident returns for said years.

2. On December 24, 1973, the petitioner Lawrence W. Lindberg executed a consent extending the period within which to issue assessments for the years 1969 and 1970 to April 15, 1975.

3. On April 11, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners for the year 1970 in the amount of \$3,505.88, with interest of \$839.41, for a total of \$4,345.29. Accordingly, it issued a Notice of Deficiency therefor. The petitioners timely filed a petition for redetermination of said deficiency.

4. The Statement of Audit Changes provided, in part, as follows:

"Days on which normal duties were performed for your employer may not be counted as nonworking days and must be included in total days worked.

Time spent at a taxpayer's home is not recognized as a proper basis for allocation of income from salaries or wages.

Since 17 Saturdays and Sundays were claimed as worked, they are not included as nonworking days.

As \$40,000.00 wages received during 1970 represent compensation for services performed in 1969, the allocation of this income must be based on the basis of days worked within and without New York State during 1969.

Your allocation of wage income to New York State for 1970 is recomputed as follows:

Total days in year	365
Saturdays and Sundays	<u>87</u>
Total days worked in year	278
Days worked outside New York State	<u>51</u>
Days worked in New York State	227"

5. During the year 1970 and prior thereto, the petitioner Lawrence W. Lindberg was the sole stockholder, sole officer and an employee of Lindberg Productions, Inc., a corporation organized under the laws of the State of New York and located at 49 West 49th Street, New York, New York. The corporation filed franchise tax returns on a fiscal year period ending March 31.

6. On its franchise tax returns for the fiscal years ending March 31, 1970 and March 31, 1971, Lindberg Productions Inc. did not claim that it had facilities outside the State of New York or that it was entitled to an allocation of earnings attributable to sources outside the State of New York.

7. During the year 1970 and prior thereto, the petitioner Lawrence Lindberg performed services as a motion picture photographer of sporting events for Lindberg Productions, Inc., within and without the State of New York.

8. The petitioners constructed a building adjacent to their home in Vermont which was equipped as a studio for the screening, editing and processing of film, and in which they stored the photographic equipment used by the petitioner Lawrence Lindberg to photograph sporting events. The equipment was owned by Lindberg Production, Inc.

9. During the year 1970 and prior thereto, the petitioner Lawrence Lindberg was president of Lindberg Properties, Inc., a Vermont corporation with no offices in the State of New York. Mr. Lindberg received compensation from this corporation for services performed regarding the operation of a movie theatre in Vermont.

10. The petitioner Lawrence Lindberg spent 51 days outside the State of New York, other than days spent at home in Vermont, on behalf of Lindberg Productions, Inc. during the year 1970.

11. The petitioner did not present sufficient evidence to dispute the fact that the total days worked by him in 1970 totalled 278. The petitioner claims that he is entitled to an allocation for days worked at home in Vermont.

CONCLUSIONS OF LAW

A. That any allowance claimed for days worked outside the State must be based upon the performance of services which of necessity - as distinguished from convenience - obligate the employee to out-of-state duties in the service of his employer. (20 NYCRR 131.16)

B. That during the year 1970 Lindberg Productions, Inc. did not maintain a bona fide place for the transaction of its business in the State of Vermont.

C. That services performed by Lawrence W. Lindberg in 1970 on behalf of Lindberg Productions, Inc., at his home in Vermont, were performed for his convenience and not for the necessity of the employer.

D. That the petitioner Lawrence W. Lindberg is not entitled to an allocation of earnings outside the State of New York for services performed at home.

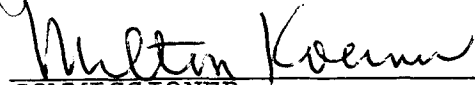
E. That the petition of Lawrence W. Lindberg and Karen Lindberg for the year 1970 be and the same is hereby denied.

DATED: Albany, New York

February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER