

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD and JOAN CANTER

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) 1970~~ 1971.:
~~(x) 1970~~

State of New York
County of Albany

John Huhn , 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 16th day of March , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Leonard & Joan Canter

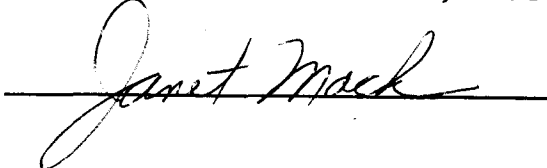
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Leonard Canter
953 Wildwood Avenue
Oradell, New Jersey 07649

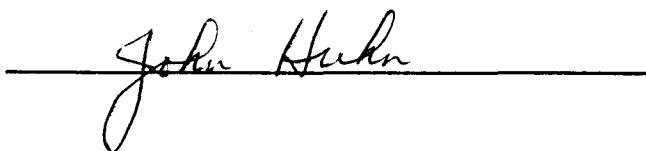
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

16th day of March , 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD and JOAN CANTER

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) or (x) or (x)~~ 1971.:
~~(x) or (x) or (x)~~

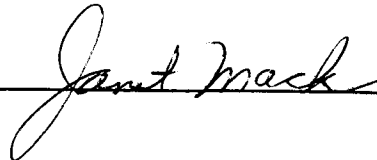
State of New York
County of Albany

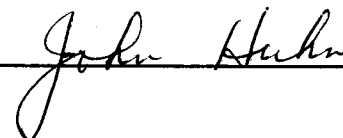
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of March , 19 78, he served the within
Notice of Decision by (certified) mail upon Alfred Simon
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Alfred Simon, CPA
Alfred Simon and Company
25 East Salem Street
Hackensack, New Jersey 07601
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

16th day of March , 1978







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

March 16, 1978

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

Mr. & Mrs. Leonard Canter
953 Wildwood Avenue
Oradell, New Jersey 07649

Dear Mr. & Mrs. Canter:

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,

Joseph Chyrywat
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEONARD and JOAN CANTER : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1971. :
:

Petitioners, Leonard and Joan Canter, 953 Wildwood Avenue, Oradell, New Jersey 07649, 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 1971 (File No. 13539).

A small claims hearing was held before Joseph Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 28, 1977 at 1:15 P.M. Petitioners appeared by Alfred Simon, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioner Leonard Canter properly allocated his 1971 wages for New York State personal income tax purposes.

FINDINGS OF FACT

1. Petitioners, Leonard and Joan Canter, New Jersey residents, timely filed a New York State income tax nonresident return for the year 1971. On this return, petitioner Leonard Canter claimed that he worked 261 days during 1971, of which 58 were days worked outside New York State. Therefore he allocated the wages he received from his New York employer on the basis of the ratio that 203 days bore to 261 days.

2. On March 21, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners disallowing the allocation of wages claimed for 1971. This was done on the grounds that petitioner Leonard Canter failed to submit information requested in letters from the Income Tax Bureau dated September 11, 1973 and December 13, 1973, pertaining to the allocation claimed. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued against petitioners on December 23, 1974 in the amount of \$1,043.79, plus interest of \$168.37, for a total of \$1,212.16.

3. During the year 1971, petitioner Leonard Canter was senior vice-president of Jamesway Corporation ("Jamesway"), a New York based corporation which operated a chain of discount department stores in New York, Pennsylvania, Ohio and New Jersey. He contended that it was his duty to travel outside New York State to find new sites for further expansion by the corporation and to check the operation of existing stores both within and without New York State.

4. Petitioners submitted a photocopy purported to be petitioner Leonard Canter's travel worksheet for the year 1971 showing 58 days worked outside New York State. However, the worksheet failed to show the location where the services were rendered outside New York State on the dates listed, the nature of the duties performed at such locations and whether he worked at his home in New Jersey on any of said dates.

5. Petitioner Leonard Canter contended that he kept a diary of his work activities for 1971 in order to support the allocation claimed, but that it was no longer in his possession as he had submitted it to Jamesway. He further contended that he was unable to obtain his diary as he was no longer employed by Jamesway.

6. Petitioners also introduced into evidence annual reports of Jamesway for the years 1970 and 1971 wherein various references to Mr. Canter's duties and Jamesway's expansion plans were highlighted.

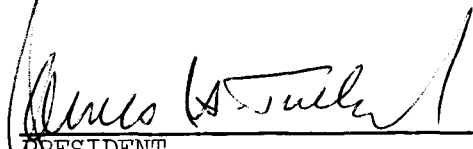
CONCLUSIONS OF LAW

A. That petitioner Leonard Canter failed to sustain the burden of proof required to show a) the number of days he worked outside New York State during 1971, b) that he was obligated by his employer to work outside New York State on any of the 58 days claimed to have been worked outside New York State c) that he did not work at his home in New Jersey as a matter of convenience on the days claimed to have been worked outside New York State. Therefore, petitioner Leonard Canter did not properly allocate his 1971 wages for New York State personal income tax purposes, within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

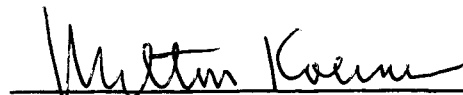
B. That the petition of Leonard and Joan Canter is denied and the Notice of Deficiency issued December 23, 1974 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
March 16, 1978

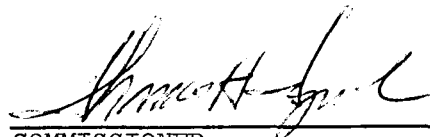
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER