

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD C. and REGINA CRIMMINS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (2) 22 of the :
Tax Law for the Year (1971) 1971. :

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 25th day of August , 1978, He served the within
Notice of Decision by (certified) mail upon Edward C. & Regina
Crimmins (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. Edward C. Crimmins
Easton Road
Weston, Connecticut 06880

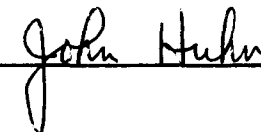
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25th day of August , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD C. and REGINA CRIMMINS

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) or Period(s)~~ 1971.:

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
xhe is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August , 1978, xhe served the within
Notice of Decision by (certified) mail upon Richard M. Orin

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Richard M. Orin, Esq.
500 Fifth Avenue
New York, New York 10036

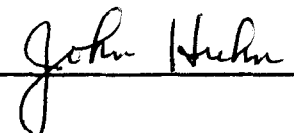
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25th day of August , 1978.







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 25, 1978

**Mr. & Mrs. Edward C. Crimmins
Easton Road
Weston, Connecticut 06880**

Dear Mr. & Mrs. Crimmins:

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,

**Joseph Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD C. and REGINA CRIMMINS

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1971.

DECISION

Petitioners, Edward C. and Regina Crimmins, East Road,
Weston, Connecticut 06880, 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. 12569).

A small claims hearing was held before William Valcarcel,
Hearing Officer, at the offices of the State Tax Commission, Two
World Trade Center, New York, New York, on September 17, 1976 at
10:45 A.M. Petitioners appeared by Richard M. Orin, Esq. The
Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt,
Esq., of counsel).

ISSUE

Whether the seventy-eight days which petitioner contended
that he worked in Connecticut during the period August 10, 1971
to December 31, 1971 constituted days worked outside New York
State for income allocation purposes.

FINDINGS OF FACT

1. Petitioners, Edward C. and Regina Crimmins, filed a New York State income tax nonresident return for 1971. On this return, they allocated petitioner Edward C. Crimmins' income from Arcata Research Corp. on the basis of days worked within and without New York State. Petitioner Edward C. Crimmins reported that he worked a total of 110 days during 1971 outside New York State.

2. On January 22, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for 1971, asserting additional personal income tax in the sum of \$1,902.04. This was done because the seventy-eight days that Edward C. Crimmins worked at his Connecticut home were not recognized as a proper basis for allocation of wages to sources outside New York State. Accordingly, the Income Tax Bureau issued a Notice of Deficiency against petitioners dated January 27, 1975.

3. Edward C. Crimmins was hired by Arcata Research Corp., 745 Fifth Avenue, New York, New York, and was assigned to be the chief executive officer of Media Records, Inc., a wholly-owned subsidiary of Arcata National Corporation.

4. Media Records, Inc. was a New York corporation with offices at 370 Seventh Avenue, New York, New York. Arcata National Corp. was incorporated and had offices in the State of California.

5. From January 1, 1971 through August 9, 1971, Edward C. Crimmins was assigned to Media Records, Inc., 370 Seventh Avenue, New York, New York. On August 10, 1971, Media Records, Inc. was sold by Arcata National Corp., whereupon petitioner was assigned to the parent corporation in California as a consultant. As a result, he was required to work out of his home in Connecticut, since no facilities were provided for him in New York.

6. During the period in which Edward C. Crimmins was assigned to Arcata National Corp. (August 10, 1971 to December 31, 1971), he worked a total of seventy-eight days in Connecticut; however, he contended that only 25% of these days involved work at his home. Petitioner did not submit any documentary evidence to show the number of days that he worked at his home in Connecticut, or the number of days on which he performed services on behalf of his employer at other locations in Connecticut during said period.

7. Arcata Microfilm, a division or subsidiary of Arcata National, operated a facility at Spring Valley, New York. Many of Edward C. Crimmins' appointments in the New York and Connecticut

region were made by personnel at said facility. Mr. Crimmins worked in Spring Valley on five days in the period August 10, 1971 through December 31, 1971.

8. Edward C. Crimmins' wage and tax statement for 1971 was issued by "Arcata Research Corp., 745 Fifth Avenue, New York, New York 10022."

CONCLUSIONS OF LAW

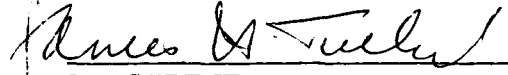
A. That the days worked by petitioner Edward C. Crimmins at his Connecticut home during 1971 were days worked there by reason of his own necessity and convenience and not for the necessity of his employer; therefore, such days are considered to have been as days worked within New York State for income allocation purposes, in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

B. That Edward C. Crimmins has failed to sustain the burden of proof required to show that any of the seventy-eight days worked by him in Connecticut during the period August 10, 1971 through December 31, 1971 were worked outside New York State by reason of necessity rather than convenience. Therefore, none of the aforementioned days are considered to be days worked outside New York State within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

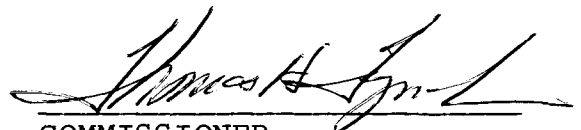
C. That the petition of Edward C. and Regina Crimmins is denied and the Notice of Deficiency issued January 27, 1975 in the amount of \$2,219.62 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER