

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JEREMIAH MURPHY and DOLORES MURPHY

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 Period (X)
1972

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 17th day of February , 1978, she served the within

Notice of Decision

by (certified) mail upon Jeremiah Murphy and
Dolores Murphy

(representative of the) the petitioner in the within proceeding,

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

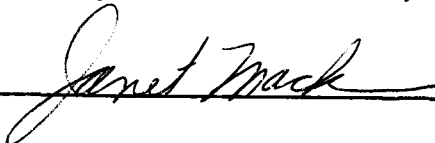
as follows: Jeremiah Murphy and Dolores Murphy
810 Willow Grove Road
Westfield, New Jersey 07090

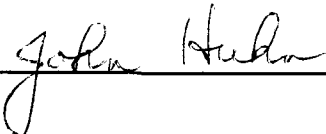
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the)
(X) 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

17th day of February , 1978.







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

February 17, 1978

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

Jeremiah Murphy and Dolores Murphy
810 Willow Grove Road
Westfield, New Jersey 07090

Dear Mr. & Mrs. Murphy:

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 ~~691~~ **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 CHIRPAWATY
HEARING EXAMINER

~~XXXX Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JEREMIAH MURPHY and DOLORES MURPHY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1972.	:	

Petitioners, Jeremiah Murphy and Dolores Murphy, 810 Willow Grove Road, Westfield, New Jersey 07090, 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 1972 (File No. 12275).

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 November 15, 1976 at 9:15 A.M. The petitioner appeared pro se and for his wife, petitioner Dolores Murphy. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the sixty days worked at petitioner's home in New Jersey during 1972 can be considered days worked without New York State for purposes of income allocation.

FINDINGS OF FACT

1. Petitioners, Jeremiah Murphy and Dolores Murphy, filed a New York State Income Tax Nonresident Return for the year 1972. On this return, they allocated petitioner Jeremiah Murphy's income on the basis of days worked within and without New York State.

2. On July 28, 1975, the Income Tax Bureau issued a Notice of Deficiency against the petitioners imposing additional personal income tax for the year 1972 in the amount of \$1,824.20. It was issued on the grounds that they failed to substantiate the days petitioner Jeremiah Murphy worked outside New York State.

3. During the year 1972, petitioner Jeremiah Murphy was a securities sales representative, a senior account executive and an assistant vice-president for Merrill Lynch, Pierce, Fenner and Smith, Inc., the offices of which were located in New York City.

4. Petitioner Jeremiah Murphy suffered a heart attach during 1971. Because of his physical condition, he performed his duties for Merrill Lynch, Pierce, Fenner and Smith, Inc. at his New Jersey home for a period of sixty days during the year 1972. These duties were performed there with the knowledge and approval of his employer.

CONCLUSIONS OF LAW

A. That the sixty days worked by petitioner Jeremiah Murphy at his New Jersey home during 1972 were days worked there by reason of his own necessity and convenience and not for the necessity of his employer, and that such days are considered 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 the petition of Jeremiah Murphy and Dolores Murphy is denied and the Notice of Deficiency issued July 28, 1975 in the sum of \$2,135.68 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

February 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER