

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STEPHEN A. & JOYCE C. RAPAPORT

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) 1972~~ 1972.:
~~(x) 1972~~

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 Stephen A. & Joyce C.
Rapaport (~~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. Stephen A. Rapaport
81 Kettle Creek Road
Weston, Connecticut 06880

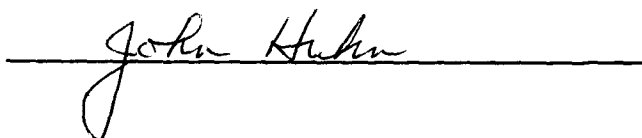
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~(x) 1972~~ 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

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of

STEPHEN A. & JOYCE C. RAPAPORT

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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) 1971~~ 1972..

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 Raymond H. Brown

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Raymond H. Brown, CPA
76 Douglas Place
Mount Vernon, New York 10552

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

Janet Mack

John Huhn



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. Stephen A. Rapaport
81 Kettle Creek Road
Weston, Connecticut 06890**

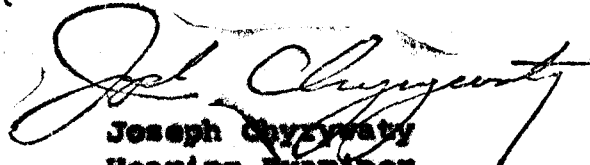
Dear Mr. & Mrs. Rapaport:

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 Chyzewsky
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

STEPHEN A. & JOYCE C. RAPAPORT :

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, Stephen A. and Joyce C. Rapaport, 81 Kettle Creek 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 1972 (File No. 10831).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 30, 1977 at 9:15 A.M. Petitioners appeared by Raymond H. Brown, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner Stephen A. Rapaport, a nonresident, properly allocated his salary income as to days worked within and without New York State during 1972.

II. Whether days worked in Weston, Connecticut, were properly allocated as days worked without New York State.

FINDINGS OF FACT

1. Petitioners, Stephen A. and Joyce C. Rapaport, timely filed a New York State personal income tax nonresident return for the year 1972. On it they claimed that petitioner Stephen A. Rapaport worked 118 days outside New York State. Therefore, they allocated his 1972 salary income on the basis of the ratio that 119 days worked within New York State bore to 237 total working days.

2. The Income Tax Bureau contended that petitioner Stephen A. Rapaport worked a total of 239 days in the year 1972, of which only 41 were worked without New York State. It contended that days claimed as having been worked in Weston, Connecticut, were not allocable as days worked without New York State. The balance of days claimed as having been worked without New York State were disallowed because they were not substantiated.

3. The Income Tax Bureau issued a Statement of Audit Changes reflecting the change in allocation of wage income. The Statement of Audit Changes also reflected certain corrections made on petitioners' return in their favor. Said corrections are not at issue.

4. In accordance with the Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency against petitioners on December 22, 1975 in the amount of \$751.23 in personal income tax, plus \$151.42 in interest, for a total due of \$902.65.

5. Petitioner Stephen A. Rapaport was president and general sales manager of the International Home Sewing Club, Ltd. Said corporation was located in New York. He contended that he worked atleast 80 days without New York State. He did not submit sufficient evidence to establish that he worked more than 41 days without New York.

6. Petitioner Stephen A. Rapaport contended that days worked in Weston, Connecticut, were worked at his attorney's office for purposes of his own convenience and did not involve legal matters. International Home Sewing Club, Ltd. did not have an office in Weston, Connecticut.

7. The Statement of Audit Changes issued against petitioners did not include the 20 percent capital gain modification of \$69.00 (required under section 612(b)(11) of the Tax Law), or the subtraction of petitioners' New York State refund in the sum of \$1,775.00 in arriving at the total Federal amount required to be reported at line 5, column A, page 1 of their return.

CONCLUSIONS OF LAW

A. That petitioners, Stephen A. and Joyce C. Rapaport, did not properly allocate petitioner Stephen A. Rapaport's salary income as to days worked within and without New York State during the year 1972 in accordance with the meaning and intent of section 632 of the Tax Law; thus only 41 days of the total 239 days worked during said year are allocable as days worked without New York State.

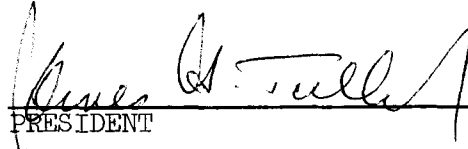
B. That the days petitioner Stephen A. Rapaport worked in Weston, Connecticut, did not constitute days worked outside New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

C. That the petition of Stephen A. and Joyce C. Rapaport is granted to the extent of adding a 20 percent capital gain modification to their total Federal income and subtracting the New York State refund from total Federal income, thereby reducing the additional personal income tax due from \$751.23 to \$684.61; however,

this modified amount is due, together with such additional interest as may be lawfully owing. The Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued December 22, 1975 and, that except as so modified, the petition is in all other respects denied.

DATED: Albany, New York
March 16, 1978

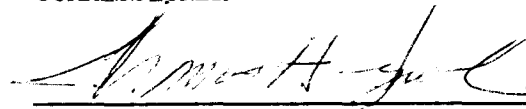
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER