

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES E. AND MARILYN L. VAN LAER

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) ~~XXXXXX~~ ~~XXXXXX~~  
1971 and 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 Charles E. & Marilyn L.  
Van Laer

~~XXXXXX~~ the petitioner in the within proceeding,

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

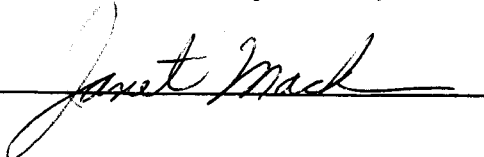
as follows: Charles E. & Marilyn L. Van Laer  
9 East Riding Drive  
Cherry Hill, New Jersey 08003

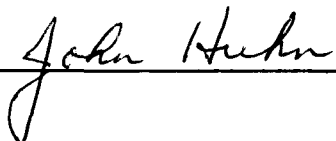
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative)~~  
~~XXXXXX~~ 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

Charles E. & Marilyn L. Van Laer  
9 East Riding Drive  
Cherry Hill, New Jersey 08003

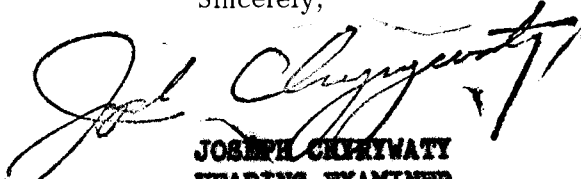
Dear Mr. & Mrs. Van Laer:

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~~ **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 CHYKWATY**  
**HEARING EXAMINER**

~~XX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
CHARLES E. AND MARILYN L. VAN LAER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1971 and	:	
1972.	:	

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Petitioners, Charles E. and Marilyn L. van Laer, residing at 9 East Riding Drive, Cherry Hill, New Jersey 08003, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File No. 13444).

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 May 25, 1977 at 2:45 P.M. Petitioner Charles E. van Laer appeared pro se and for his wife, petitioner Marilyn L. van Laer. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

#### ISSUES

I. Whether the days on which petitioner Charles E. van Laer worked at his home in New Jersey constituted days worked outside New York State for income allocation purposes.

II. Whether petitioners, Charles E. and Marilyn L. van Laer were entitled to net, capital loss carry-over deductions of \$1,000.00 on each of their 1971 and 1972 New York State nonresident income tax returns, in connection with a capital loss incurred on the sale of securities during years in which petitioners were residents of New York.

FINDINGS OF FACT

1. Petitioners filed New York State nonresident income tax returns for 1971 and 1972, on which they claimed capital loss deductions of \$1,000.00 for each year. On the 1972 New York return, petitioner Charles E. van Laer allocated his 1972 wages from International Business Machines Corporation ("IBM") according to days worked within and without New York State. He worked 42 days outside New York State in 1972, of which 15 days were days worked at his home in New Jersey.

2. The Income Tax Bureau contended that a capital loss resulting from the sale or exchange of intangible personal property could not be deducted by the nonresident petitioners. It also contended that the days on which petitioner Charles E. van Laer worked at his home did not constitute days worked outside New York State for income allocation purposes. Accordingly, a Notice of Deficiency for the year 1971 was issued on March 31, 1975, amounting to \$36.98 in additional tax, plus \$6.57 in interest, for a total due

of \$43.55. Another Notice of Deficiency was issued on the same date for the year 1972, amounting to \$164.62 in additional tax, plus \$24.18 in interest, for a total due of \$188.80.

3. Petitioner Charles E. van Laer contended that he worked for IBM in New York during the year 1972 as its National Account Manager. The 15 days he claimed as days worked without New York State at his home in New Jersey were spent working for IBM on an account outside New York State. He chose to work at home rather than at IBM's place of business in New York because he lived 90 miles from New York and because he preferred to be at home with his family.

4. Petitioners, Charles E. and Marilyn L. van Laer, were residents of New York State prior to 1971. They sustained a capital loss which resulted from the sale of stock during their New York State resident period, which loss they carried over to their non-resident years, 1971 and 1972.

#### CONCLUSIONS OF LAW

A. That the days worked at home in New Jersey during the year 1972 by petitioner Charles E. van Laer were worked there in the service of his New York State employer and not for an out-of-state account. Said days were worked at home by reason of his own convenience and not for the necessity of his employer. Therefore, the

days which he worked at home are not to be considered 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.

B. That the net, capital loss carry-over deductions claimed by petitioners for the years 1971 and 1972 were not derived from or connected with New York State sources, even though the loss from the sale of securities was sustained during petitioners' period of New York residence. Therefore, the amounts claimed as net, capital loss carry-over deductions were not deductible in the aforementioned nonresident years, in accordance with the meaning and intent of section 632(b) and 20 NYCRR 131.2.

C. That the petition of Charles E. and Marilyn L. van Laer is denied and the notices of deficiency are sustained.

DATED: Albany, New York  
February 17, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER