

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

John W. & Marian F. Gray :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Years 1970 & 1971. :

State of New York

County of Albany

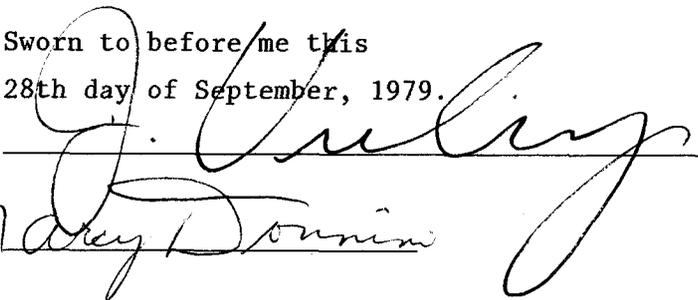
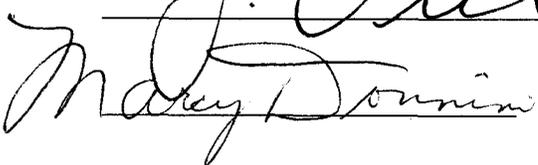
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon John W. & Marian F. Gray, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John W. & Marian F. Gray
976 Great Hill Rd.
Guilford, CT 06437

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

John W. & Marian F. Gray :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Years 1970 & 1971. :

State of New York

County of Albany

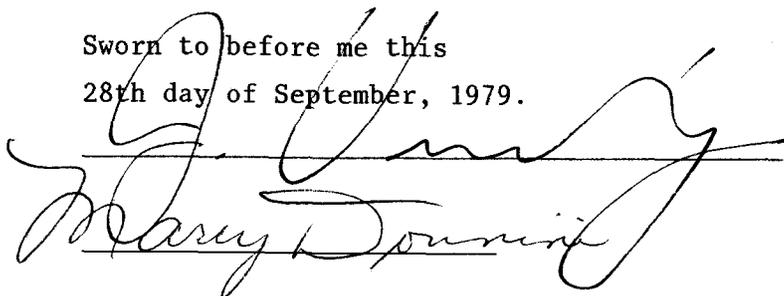
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Edward P. Singer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Edward P. Singer
27 Peck Rd.
Mt. Kisco, NY 10549

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
28th day of September, 1979.



Mary Downing



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

John W. & Marian F. Gray
976 Great Hill Rd.
Guilford, CT 06437

Dear Mr. & Mrs. Gray:

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(s) 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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative
Edward P. Singer
27 Peck Rd.
Mt. Kisco, NY 10549
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

JOHN W. GRAY and MARIAN F. GRAY :

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1970 and 1971. :

Petitioners, John W. and Marian F. Gray, 976 Great Hill Road, Guilford, Connecticut 06437, 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 1970 and 1971 (File No. 11237).

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 21, 1978 at 9:15 A.M. Petitioners appeared by Edward P. Singer, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (R. Felix, Esq., of counsel).

ISSUE

Whether days on which petitioner John W. Gray worked at his home in Connecticut in 1970 and 1971 constituted days worked outside New York State for income allocation purposes.

FINDINGS OF FACT

1. Petitioners, John W. and Marian F. Gray, filed joint New York State income tax nonresident returns for 1970 and 1971. On these returns, petitioner John W. Gray allocated the salary income which he earned, based on days worked within and without New York State.

2. On March 25, 1974 and November 26, 1973, after an audit, the Income Tax Bureau issued notices of deficiency against petitioners for 1970 and 1971. Both deficiencies were issued on the grounds that days on which petitioner worked at home in Connecticut were not considered days worked without New York State; accordingly, the Bureau determined that his salary income was taxable in full.

3. From March of 1946 until his retirement in May of 1972, petitioner John W. Gray was employed by the Kearfott Division of the Singer Company, Inc. ("Singer"), which was located in Pleasantville, New York. In 1969 petitioner submitted his resignation to Singer, indicating that the daily commuting between New York and Connecticut had become too burdensome. In order to let petitioner continue his employment as an electrical engineer, Singer arranged to have petitioner perform some of his duties at his home in Connecticut.

4. Petitioner John W. Gray performed his duties, which were primarily designing and testing special circuits, at a laboratory which he maintained at his home in Connecticut. He was also required to work at the Pleasantville, New York, location on Tuesday and Thursday of each and every week, and did so during 1970 and 1971.

5. Petitioner contended that by performing his services at home, he was able to continue his employment with Singer and to perform said duties without interruption, and also without the unauthorized "borrowing" of his tools.

CONCLUSIONS OF LAW

A. That the services which petitioner rendered at his home in Connecticut during 1970 and 1971 were performed there by reason of his own convenience and necessity, and not for the necessity of his employer; therefore, the days worked at his home in Connecticut must be considered days worked in 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 John W. and Marian F. Gray is denied and the notices of deficiency dated March 25, 1974 and November 26, 1973 are sustained, together with such additional interest as may be lawfully owing.

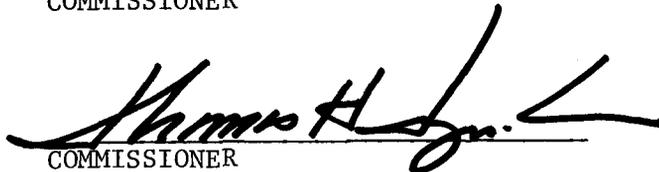
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER