

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING N. AND IRENE F. LEVEY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(8)~~ 22 of the :
Tax Law for the Year(s) ~~xxxPeriod(s)~~ :
1969, 1970, 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 24th day of January , 1979, she served the within
Notice of Decision by (certified) mail upon Irving N. and
Irene E. Levey ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Irving N. and Irene E. Levey
4342 Britt Place
Columbus, Ohio 43227

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)~~
~~xxxthe~~ 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

24th day of January , 1979.

Marilyn J. Repurman

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING N. AND IRENE F. LEVEY

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)~~ :
1969, 1970, 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 24th day of January , 1979 , Xhe served the within
Notice of Decision by (certified) mail upon Arnold Bennett
Glenn, Esq. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Arnold Bennett Glenn, Esq.
575 White Plains Road
Eastchester, NY 10707

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

24th day of January , 19 79

Marilyn J. Papenian

John Huhn



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

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

January 24, 1979

Irving N. and Erene F. Levey
4342 Britt Place
Columbus, Ohio 43227

Dear Mr. & Mrs. Levey

Please take notice of the **Notice of Decision**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(2)~~ **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 **four 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 Chyrywat
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
IRVING N. AND IRENE F. LEVEY	:	DECISION
for Redetermination of Deficiencies or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969, 1970, 1971 and 1972.	:	

Petitioners, Irving N. and Irene F. Levey, 4342 Britt Place, Columbus, Ohio 43227, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1969, 1970, 1971 and 1972 (File Nos. 13586 and 14945).

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 November 15, 1977 at 2:45 P.M. Petitioners appeared by Arnold Bennett Glenn, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether a portion of nonresident petitioner Irving N. Levey's wage income was allocable to sources outside New York State during 1970, 1971 and 1972.

II. Whether days worked by petitioner Irving N. Levey in Columbus, Ohio, during 1969, 1970, 1971 and 1972 were days worked outside New York State, for purposes of income allocation.

FINDINGS OF FACT

1. Petitioners, Irving N. and Irene F. Levey, filed New York State income tax nonresident returns from 1969 through 1972, on which they allocated petitioner Irving N. Levey's income to sources within and without New York State.

2. For 1969 the Income Tax Bureau contended that days worked in Columbus, Ohio, by petitioner Irving N. Levey were worked there by reason of his own convenience and not by reason of the necessity of his New York employer; therefore, the income derived from said days was considered New York source income. Accordingly, the Bureau issued a Notice of Deficiency on June 28, 1971 for \$106.93 in personal income tax, plus \$7.71 in interest, for a total of \$114.64.

3. For 1970, 1971 and 1972, petitioner Irving N. Levey failed to answer letters requesting information; therefore, the Income Tax Bureau disallowed all allocation of income to sources outside New York State and on April 12, 1974, it issued a Notice of Deficiency for said years for \$2,818.51 in personal income tax, plus \$332.75 in interest, for a total of \$3,151.26

4. During the years at issue, petitioners were residents of Columbus, Ohio. Petitioner Irving N. Levey was employed in New York City as sales director of the paperback department of Harper and Row Publishers, (hereinafter "Harper"). Harper was located in New York and did not have an office in Columbus, Ohio.

Petitioner Irving H. Levey worked approximately three days each week in Harper's New York place of business. During the balance of the week, he traveled or worked at an office which he maintained at his home in Columbus.

5. Almost all of the days spent working in Columbus immediately preceeded or followed weekends and holidays. At his home office, petitioner contended that he met with authors, free-lance readers, photographers, illustrators, supervised midwest salesmen and conducted surveys and merchandising experiments. Petitioner did not submit documentary or other substantial evidence to show that he was obliged to perform these services in Columbus, or that they were performed there by reason of the necessity of his employer.

6. Petitioner worked 227 days in 1969. He spent 63 of these days working outside New York State and 21 of the 63 working in Columbus, Ohio.

7. Petitioner worked 252 days in 1970. He spent 102 of these days working outside New York State and 39 of the 102 working in Columbus, Ohio.

8. Petitioner worked 240 days in 1971. He spent 89 of these days working outside New York State and 26 of the 89 working in Columbus, Ohio.

9. Petitioner worked 238 days in 1972. He spent 88 of these days outside New York State and 40 of the 88 working in Columbus, Ohio.

CONCLUSIONS OF LAW

A. That petitioner Irving N. Levey could allocate a portion of his wage income on the basis of days worked without New York State, in accordance with the meaning and intent of section 632(c) of the Tax Law and 20NYCRR 131.16.

B. That the days worked in Columbus, Ohio, by petitioner Irving N. Levey during 1969, 1970, 1971 and 1972 were worked there by reason of his own convenience and not by reason of the necessity of his employer; therefore, said days must be held to be days worked within New York State, in accordance with the meaning and intent of section 632(c) of the Tax Law and 20NYCRR 131.16. However, the days spent outside New York and outside Columbus, Ohio, during the years at issue may be allocated as days worked without New York State.


C. That the petitions of Irving N. and Irene F. Levey are granted to the extent of reducing additional personal income tax due for 1969 from \$106.93 to \$97.77, for 1970 from \$797.00 to \$279.45, for 1971 from \$868.01 to \$295.88 and for 1972 from \$1,153.50 to \$542.50, together with such interest as may be lawfully owing; that the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued June 28, 1971 and April 12, 1974 and that, except as so granted, the petitions are in all other respects denied.

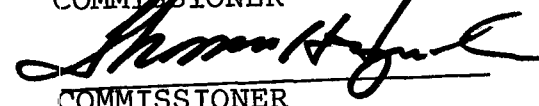
DATED: Albany, New York

January 24, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER