

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JOHN E. and JUSTINE V. MACURDY :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1971, 1972 and 1973

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that  
~~she~~ he 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~~ he served the within  
Decision by (certified) mail upon John E. and Justine

V. Macurdy ~~XXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: John E. and Justine V. Macurdy  
73 Tall Oaks Court  
Stamford, Conn. 06903  
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 ~~XXXXXX~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

24th day of January , 1979.

Marilyn J. Papinian

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JOHN E. AND JUSTINE V. MACURDY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) ~~1971, 1972 and 1973~~ :  
1971, 1972 and 1973

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 24th day of January, 1979, he served the within  
Notice of Decision by (certified) mail upon Warren B. Kahn,  
Esq. (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:  
Warren B. Kahn, Esq.  
c/o Buhler, King and Buhler  
274 Madison Avenue  
New York, New York, 10016  
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, 1979.

Mariann J. Papineau

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**

**John V. and Justine V. Macurdy  
73 Tall Oaks Court  
Stamford, Conn 06903**

**Dear Mr. & Mrs. Macurdy**

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,

**Joseph Chyrywaty  
Hearing Examiner**

cc: Petitioner's Representative  
  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
JOHN E. and JUSTINE V. MACURDY	:	
for Redetermination of Deficiencies or for	:	DECISION
Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1971, 1972 and 1973.	:	

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Petitioners, John E. and Justine V. Macurdy, 73 Tall Oaks Court, Stamford, Connecticut 06903, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1971, 1972 and 1973 (File Nos. 13818 and 15708).

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 16, 1977 at 9:15 A.M. Petitioners appeared by Nelson Buhler, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

#### ISSUES

I. Whether days spent by petitioner John Macurdy at his studio in his Connecticut home during 1971, 1972 and 1973, in preparation and rehearsal for operatic performances, can be considered days worked without New York State.

II. Whether Saturdays, Sundays, holidays and vacation

days, shown on petitioners' tax returns in schedules A-1 as nonworking days, should be considered working days.

FINDINGS OF FACT

1. Petitioners, John E. and Justine V. Macurdy, timely filed New York State personal income tax nonresident returns for 1971, 1972 and 1973, on which they allocated petitioner John Macurdy's income to sources within and without New York State.

2. For 1971 the Income Tax Bureau disallowed any allocation of wages from petitioner John Macurdy's New York employer, except for wages paid for services performed outside New York. It issued a Statement of Refund Adjustment, reducing petitioners' claimed refund from \$2,916.00 to \$1,089.48. Petitioners' protest to the adjustment was denied by the Income Tax Bureau on March 30, 1973, and the adjusted refund plus interest was issued June 8, 1973.

3. The Income Tax Bureau issued a Statement of Audit Changes for 1972 and 1973, in which it disallowed the allocation of wages by petitioner John E. Macurdy from his New York employer to sources outside New York State. This was done because petitioners failed to answer letters requesting information. Accordingly, the Bureau issued a Notice of Deficiency on March 29, 1976 for said years of \$6,649.45 in personal income tax, plus \$1,196.69 in interest, for a total of \$7,846.14.

4. Petitioners were residents of Connecticut during the years at issue. Petitioner John Macurdy is a world famous

opera singer. He performed services for the Metropolitan Opera Association located in New York City. He was compensated on a weekly salary basis under a written agreement. Said agreement required that he be completely prepared to perform in any one of forty-seven operas in either Italian, French, German or English, whenever he was so requested.

5. Petitioner John Macurdy contended that because of the limited rehearsal facilities available at the Metropolitan Opera Association's premises, he was required to establish and maintain a large studio in his home for practice and rehearsal in order to be completely prepared to perform. Also, his wife would be available at that studio to accompany him on the piano. He further contended that he worked (either performing or practicing) every day of the year; therefore, the denominator in the formula in schedule A-1 of his tax returns should be 365 days for 1971 and 1973 and 366 days for 1972. His tax returns indicated 53 nonworking days during 1971 and 1972 and 67 nonworking days in 1973.

6. Petitioner John Macurdy was required to attend several scheduled rehearsals in New York City before the first performance of an opera. There were no specific rehearsal responsibilities mentioned in his employment contract. There was an understanding between petitioner and the Metropolitan Opera Association that he prepare for his operatic roles at a suitable place of his own choosing and cost. Petitioner was not

obligated by his employer to rehearse at the studio in his Connecticut home.

7. Petitioner John Macurdy traveled six weeks each year outside New York State on tour for the Metropolitan Opera Association. He also worked 41 days in 1972 and 25 days in 1973 outside New York State for other employers.

8. Petitioners did not submit documentary or other substantial evidence to show that petitioner John Macurdy was employed to work every day of the year, or to show that Saturdays, Sundays, holidays and vacation days (as reported in schedule A-1 of the tax returns for the years at issue) should be considered as working days.

#### CONCLUSIONS OF LAW

A. That the days spent in practice and rehearsal by petitioner John Macurdy at the studio in his Connecticut home during 1971, 1972 and 1973 were worked there by reason of his necessity and his convenience and not for the necessity of his employer; therefore, said days may not be held to be days worked without 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 Saturdays, Sundays, holidays and vacation days shown in petitioners' tax returns in schedules A-1 for the years at issue were nonworking days and, therefore, not subject to allocation.

C. That the petitions of John E. and Justine V. Macurdy are granted only to the extent of correcting the Statement of Refund Adjustment for 1971 and the Notice of Deficiency for 1972 and 1973, so as to reflect the inclusion of days worked without New York State by petitioner John Macurdy in the allocation formulas for said years as follows:

1971: Of the 312 days worked by petitioner John Macurdy for his New York employer, 42 days were worked without New York State and 270 days were worked within New York State; therefore, the New York tax is reduced from \$2,558.32 (as shown on the Statement of Refund Adjustment) to \$2,405.86. The Income Tax Bureau is hereby directed to so modify the Notice of Refund Disallowance issued March 30, 1973 and to refund the amount of \$152.46, plus any interest that may be lawfully owing to petitioners.

1972: Of the 272 days worked by petitioner John Macurdy for his New York employer, 42 days were worked without New York State and 230 days were worked within New York State; therefore, the additional New York State personal income tax due is reduced from \$2,967.27 (as shown in the Notice of Deficiency) to \$2,077.80, plus any additional interest that may be lawfully owing to petitioners. The Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued March 29, 1976.

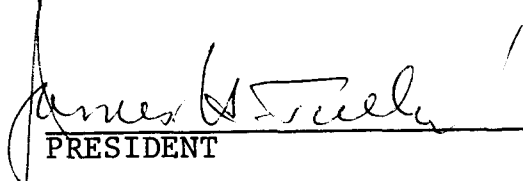


1973: Of the 273 days worked by petitioner John Macurdy for his New York employer, 42 days were worked without New York State and 231 days were worked within New York State; therefore, the additional New York State personal income tax due is reduced from \$3,682.18 (as shown on the Notice of Deficiency) to \$2,690.05, plus any additional interest as may be lawfully owing to petitioners. The Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued March 29, 1976.

D. That the petitions of John and Justine Macurdy are granted to the extent indicated in Conclusion of Law "C" above, but are in all other respects denied.

DATED: Albany, New York  
January 24, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER