

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

October 9, 1979

Oliver L. & Ellen V. Niehouse  
175 Kellogg Drive  
Wilton, CT 06897

Dear Mr. & Mrs. Niehouse:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Roy A. Abramowitz  
c/o Aruthur Andersen & Co.  
1345 Ave. of the Americas  
New York, NY 10019  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Oliver L. & Ellen V. Niehouse :

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 Year 1974. :

State of New York

County of Albany

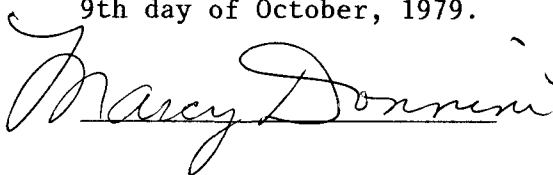
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Oliver L. & Ellen V. Niehouse, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

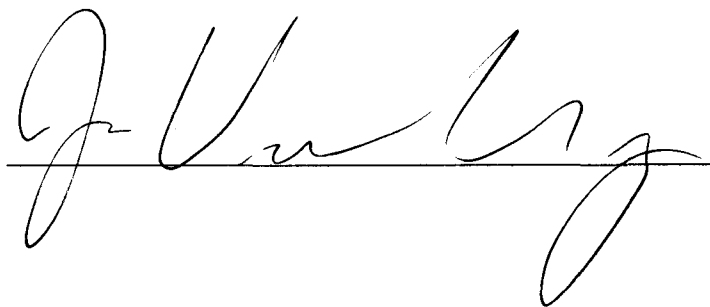
Oliver L. & Ellen V. Niehouse  
175 Kellogg Drive  
Wilton, CT 06897

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  
9th day of October, 1979.

  
Nancy Donneni



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Oliver L. & Ellen V. Niehouse :

AFFIDAVIT OF MAILING

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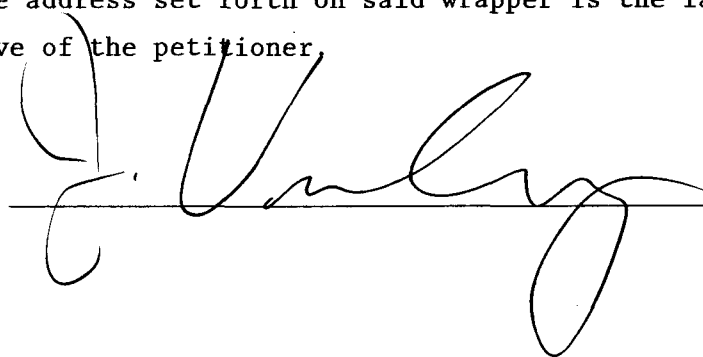
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Roy A. Abramowitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Roy A. Abramowitz  
c/o Aruthur Andersen & Co.  
1345 Ave. of the Americas  
New York, NY 10019

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  
9th day of October, 1979.

A large, stylized handwritten signature, likely of Jay Vredenburg, is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
OLIVER L. NIEHOUSE and ELLEN V. NIEHOUSE : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1974. :

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Petitioners, Oliver L. and Ellen V. Niehouse, 175 Kellogg Drive, Wilton, Connecticut 06897, 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 1974 (File No. 18282).

A small claims hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 12, 1979 at 1:15 P.M. Petitioners appeared by Roy A. Abramowitz of Arthur Andersen & Co. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether earnings from services performed by petitioner Oliver L. Niehouse at his home in Connecticut are subject to New York State personal income tax.

FINDINGS OF FACT

1. Petitioners, Oliver L. and Ellen V. Niehouse, filed a New York State income tax nonresident return for 1974, on which they reported total Federal income from wages and salaries of \$44,378.63. They multiplied the Federal amount by a fraction, the numerator of which was the number of days claimed to have been worked in New York State (196) and the denominator of which was the total number of days claimed to have been worked in the year (304), and reported New York State income of \$28,612.54.

2. On March 23, 1976, the Income Tax Bureau issued a Statement of Audit Changes recomputing petitioners' wage allocation schedules and increasing personal income tax due by \$715.81, with the explanation that days worked at home were considered to be for petitioners' own convenience and were to be counted as days worked in New York State. Based on the Statement of Audit Changes, a Notice of Deficiency was issued on January 24, 1977.

3. During 1974 petitioner Oliver L. Niehouse was employed by John Paisios & Associates, a management consulting firm with offices in New York City, as its New York resident manager. He performed consulting and executive recruiting work for the firm. Some of his work was performed at home in Connecticut on evenings and on weekends. For example, much of the executive recruiting involved contacting prospective candidates by telephone at their homes during non-business hours. No heat or air conditioning was available at the New York offices of John Paisios & Associates after 6:00 P.M. during the week, or on Saturdays or Sundays. Mr. Niehouse also claimed that he worked at home because of the privacy and uninterrupted quiet which was necessary for his report writing, and also because he would have access to his personal library.

Petitioner Oliver L. Niehouse worked  $216\frac{1}{2}$  days for John Paisios & Associates during 1974, 26 of which were worked at his home in Connecticut and 8 of which were worked at other locations outside New York State.

4. During 1974 petitioner Oliver L. Niehouse was also employed by Hofstra University in Hempstead, New York, where he taught management and marketing courses. He worked on the Hempstead campus 59 days during the year and worked another  $54\frac{1}{2}$  days at his home in Connecticut, preparing lectures and new courses and grading papers and examinations. Hofstra provided Mr. Niehouse with a cubicle which he shared with another professor. The cubicle was available to Mr. Niehouse only at certain times on days when he was scheduled to teach. It

was used by him for counseling students and not for class preparation or for grading. Mr. Niehouse contended that he was required to perform work at home because of the lack of office space at Hofstra, and because his own library facilities were superior (in his field) to those of Hofstra.

5. Petitioner Oliver L. Niehouse also performed services for the American Management Association ("Association") during 1974. The Association had its principal offices in New York City; however, Mr. Niehouse, who was not an employee of the Association, was assigned no office space. His services for the Association consisted of giving lectures throughout the United States. Mr. Niehouse lectured  $9\frac{1}{2}$  days in New York State, 14 days outside New York State, and also spent 3 days at his home in Connecticut preparing for a week-long seminar which was held at Hamilton, New York. He was paid on a per diem basis for the actual days which he spent lecturing.

6. Petitioner Oliver L. Niehouse also performed services for the College Division of the McGraw-Hill Book Company during 1974. The services consisted of reviewing final manuscripts of books to be published by McGraw-Hill, as well as suggesting changes, correcting errors, rendering general editorial services and giving promotional advice. McGraw-Hill has offices in New York City but did not provide Mr. Niehouse with office space. The manuscripts were mailed to Mr. Niehouse who would submit his reviews by mail. Mr. Niehouse was not an employee of McGraw-Hill. Petitioner Oliver L. Niehouse worked  $9\frac{1}{2}$  days for McGraw-Hill, all of which were spent at his home in Connecticut.

7. Petitioner Oliver L. Niehouse also worked six days for the United States Department of State in 1974; however, none of this time is at issue.

8. Petitioner Oliver L. Niehouse worked in industry from approximately 1941 to 1971 and accumulated a library of approximately 3,000 volumes, plus numerous personal files of clippings and other information not generally

available. He kept this material in his office at his home in Connecticut, and referred to it in connection with his aforementioned activities. The office consisted of a large room which had evidently been the previous owner's family room, and which contained a desk, a telephone extension, a typewriter and files. The walls of the room were lined with volumes of Mr. Niehouse's research materials. There was also an additional file room in which much of the clippings and other information were stored.

CONCLUSIONS OF LAW

A. That the allowance claimed for days worked at his home in Connecticut by petitioner Oliver L. Niehouse for John Paisios & Associates and for Hofstra University is not based on the performance of services which of necessity, as distinguished from convenience, obligated him to out-of-state duties in the service of his employers (20 NYCRR 131.16). Accordingly, said days worked at home are deemed to be days worked in New York State for purposes of income allocation.

B. That since petitioner Oliver L. Niehouse was not an employee of the American Management Association and was paid on a per diem basis for the days which he spent lecturing, the days of preparation at his home in Connecticut are to be excluded for purposes of computing his income from New York sources. Since the precise per diem payments are unknown, the total payments from the association should be allocated to New York, based on the days spent lecturing in New York (9.5 days) over the total days spent lecturing (23.5) (20 NYCRR 131.21).

C. That the income received by petitioner Oliver L. Niehouse from the College Division of the McGraw-Hill Book Company was income from a business carried on wholly without the State; thus, it was not income from New York sources, within the meaning of section 632(a)(1) of the Tax Law. Accordingly,

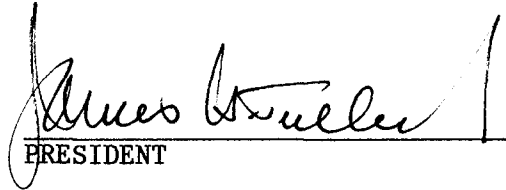
none of such income is to be included in New York adjusted gross income.

D. That except as granted in Conclusions of Law "B" and "C", the petition of Oliver L. and Ellen V. Niehouse is denied and the Notice of Deficiency issued on January 24, 1977 is sustained.

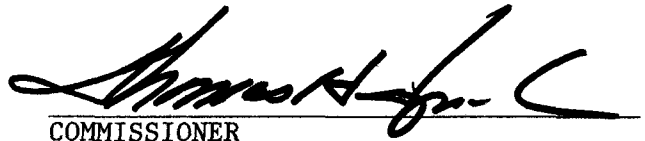
DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER