

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bayard E. & Shirley P. Sawyer :
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 1971. :

AFFIDAVIT OF MAILING

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Bayard E. & Shirley P. Sawyer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bayard E. & Shirley P. Sawyer
838 Fiddlers Trace
Fripp Island, SC 29920
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
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Bayard E. & Shirley P. Sawyer :

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for the Year 1971. :

AFFIDAVIT OF MAILING

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon William Borden 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. William Borden
5 E. 57th St.
New York, NY 10022

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
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 16, 1980

Bayard E. & Shirley P. Sawyer
838 Fiddlers Trace
Fripp Island, SC 29920

Dear Mr. & Mrs. Sawyer:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
William Borden
5 E. 57th St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BAYARD E. SAWYER and SHIRLEY P. SAWYER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1971.	:	

Petitioners, Bayard E. Sawyer and Shirley P. Sawyer, 838 Fiddlers Trace, Fripp Island, South Carolina 29920, 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 1971 (File No. 13395).

A formal hearing was held before Neil Fabricant, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 20, 1977 at 2:45 P.M. Petitioners appeared by William Borden, Esq. The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether compensation paid to petitioner Bayard E. Sawyer by McGraw-Hill, Inc. during August, September and October, 1971 constituted payments in consideration of past services rendered or whether such compensation was part of his regular salary.

FINDINGS OF FACT

1. Petitioners, Bayard E. Sawyer and Shirley P. Sawyer, timely filed a joint New York State Income Tax Nonresident Return for 1971, on which petitioner Bayard E. Sawyer allocated his salary income of \$75,749.37, based on the number of days worked within and without New York State during that entire year.

2. On January 27, 1975, the Income Tax Bureau issued a Notice of Deficiency and an explanatory Statement of Audit Changes to petitioners. On said Statement, salary income of \$60,599.00 was allocated based on the number of days worked within and without New York State during the period January 1, 1971 through July 31, 1971. The Income Tax Bureau determined that salary income of \$15,150.00 earned after July 31, 1971 constituted payments in consideration of past services rendered by Bayard Sawyer, and that said salary income was allocated in a ratio arrived at by comparing New York salary income with total salary income earned during 1968, 1969, 1970 and 1971.

3. While a resident of Connecticut, petitioner Bayard E. Sawyer was employed by McGraw-Hill, Inc. at its New York offices. On August 1, 1971, petitioners, Bayard E. Sawyer and Shirley P. Sawyer, moved to New Hampshire, where petitioner Bayard E. Sawyer made himself available to McGraw-Hill, Inc. for consultations in the event his services were needed. While "on call", Mr. Sawyer was compensated as a regular employee of McGraw-Hill, Inc. until October 31, 1971, when he retired from the company.

4. Petitioner Bayard E. Sawyer stated that during the months of August, September and October of 1971, he rendered services for McGraw-Hill, Inc. and was compensated for such services. No evidence was submitted showing the actual number of days worked, if any, within and without New York State during the period August 1, 1971 through October 31, 1971; nor was evidence submitted showing the nature of services rendered, if any, during that period. However, sometime between August 1 and December 31, 1971, Mr. Sawyer arranged and participated in a meeting between McGraw-Hill and a New Hampshire-based magazine regarding the possibilities of the acquisition of the magazine by McGraw-Hill, but it turned out that the magazine was not for sale.

5. Petitioner Bayard E. Sawyer contended that the days spent at his home in New Hampshire were days worked outside New York State.

CONCLUSIONS OF LAW

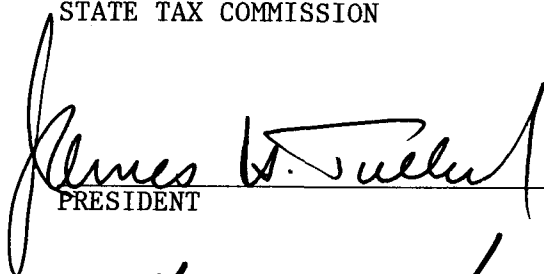
A. That the \$15,150.00 paid to petitioner Bayard E. Sawyer after August 1, 1971 by his employer, McGraw-Hill, Inc., constituted his regular compensation for services rendered. The days worked by him at his New Hampshire home during 1971 were days so worked by reason of his own convenience and not for the necessity of his employer; therefore, such days should have been considered days worked within New York State for income allocation purposes, in accordance with section 632(c) of the Tax Law and 20 NYCRR 131.16. Although under the facts of this case this would have resulted in a greater deficiency, such greater deficiency was not asserted at or before the hearing. A greater deficiency may not now be asserted pursuant to section 689(d)(1) of the Tax Law.


B. That the petition of Bayard E. Sawyer is denied and the Notice of Deficiency issued on January 27, 1975 for 1971 is sustained, together with such additional interest as may be lawfully owing.

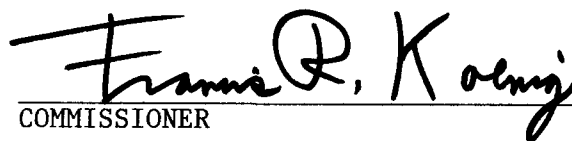
DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER