

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-H-80-(136)-I
Income Tax
July 9, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I800408A

On April 8, 1980, a Petition for Advisory Opinion was received from Edward Finkelstein and Myra Finkelstein, his wife, 23 Riverfield Drive, Westport, Connecticut 06880.

The issue raised is whether days worked by Mr. Finkelstein in 1978 at home in Connecticut can be claimed as days worked out-of-state.

Mr. Finkelstein is Chairman of the Board of Macys, New York. The principal store and executive offices are located at Herald Square which is at 34th Street and Broadway in New York City. Mr. Finkelstein's office is situated on the thirteenth floor, which houses all the executive offices. The store is open seven days a week. He is responsible for merchandising and operating decisions as well as preparation for organizational meetings. The executive offices are secured on weekends for security reasons.

Section 131.16 of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York states: "If a nonresident employee (including corporate officers but excluding employees provided for in section 131.15) performs services for his employer both within and without the State, his income derived from New York sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within the State bears to the total number of working days employed both within and without the State. The items of gain, loss and deduction (other than deductions entering into the New York itemized deduction) of the employee attributable to his employment, derived from or connected with New York sources, are similarly determined. However, any allowance claimed for days worked outside of the State must be based upon the performance of services which of necessity--as distinguished from convenience--obligate the employee to out-of-state duties in the service of his employer. In making the allocation provided for in this section, no account is taken of nonworking days, including Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation, or leave with or without pay...."

The taxpayer was not required either by contract or pursuant to any other direction of his employer to work at his home. The work was performed at his home for his own convenience on such days and not out of necessity.

The 32 days worked at home in 1978 are considered to be days worked in New York, and the income earned by the taxpayer for these workdays was derived from or connected with New York sources.

Dated: June 19, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau