

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
RUPERT AND PETRONELLA BURKS : DETERMINATION  
for Redetermination of a Deficiency or for :  
Refund of New York State and New York City :  
Income Taxes under Article 22 of the Tax Law :  
and the New York City Administrative Code for :  
the Year 1983. :

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Petitioners, Rupert and Petronella Burks, 11201-L Peartree Way, Columbia, Maryland 21044, filed a petition for redetermination of a deficiency or for refund of New York State and New York City income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the year 1983 (File No. 806791).

A hearing was held before Joseph W. Pinto, Jr., Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on January 12, 1990 at 9:00 A.M., with all briefs or submissions filed by July 5, 1990. Petitioners appeared by Robert P. Dubin, C.P.A. The Division of Taxation appeared by William F. Collins, Esq. (Michael J. Glannon, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly disallowed additional moving expenses in the sum of \$14,454.00 claimed by petitioners on their 1983 New York State Resident Income Tax Return.

FINDINGS OF FACT

After failing to receive a response to a letter requesting information with regard to petitioners' 1983 New York State income taxreturn, the Division of Taxation issued a Statement of Audit Changes to petitioners, Rupert and Petronella Burks, on March 10, 1987 which set forth the following explanation:

"Since you have not replied to our previous letter, we have computed your New York tax based on information obtained from the Internal Revenue Service under authorization of Federal Law (Section 6103(d) of the Internal Revenue Code).

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Penalty for underestimating taxable income has been applied at 5% per month up to a maximum of 25% (Section 685(a)(1) of the New York State Tax Law)."

On June 12, 1987, the Division of Taxation issued a Notice of Deficiency to petitioners setting forth additional tax due of \$10,983.37, penalty of \$733.04 and interest of \$3,599.29, for a total due of \$15,315.70.

Although there were originally several issues in dispute, the only remaining issue is that of moving expenses. The Division conceded an issue of income allocation between California and New York.

Petitioners' 1983 New York State Resident Income Tax Return indicated total wages, salaries and tips of \$122,508.00, interest income of \$1,416.00, alimony of \$4,125.00, total income of \$128,049.00, total Federal adjustments of \$63,575.00 and total adjusted income of \$64,474.00. The explanation of the Federal adjustments was set forth on a tax schedule which stated the following:

"Schedule I - Line 18 - Federal Adjustments Moving Expenses  
Moving expenses were reimbursed by ABC and were included in the W-2.

Moved on 1/30/83 from California 3,000 miles away.

1. Transportation expense to move household and pers. property	\$31,774.00	
2. Travel, meals and lodging expense during the move		14,347.00
3. Expenses incurred in purchasing a new residence	<u>17,454.00</u>	
Total moving expenses		<b>\$63,575.00"</b>

On petitioners' United States income tax return (Form 1040) for the year 1983, they claimed moving expenses totalling \$49,121.00. A form attached to said Form 1040, Form 3903, Moving Expense Adjustment, indicated transportation expenses in moving household goods and personal effects of \$31,774.00, travel, meal and lodging expenses in moving from old to new residence of \$14,347.00, and expenses of purchasing a new residence of \$17,454.00. This final expense of purchasing a new residence was reduced to \$3,000.00 since this is the

maximum amount of such expense allowed by the Internal Revenue Code. The total moving expense deduction set forth on Form 3903 was \$49,121.00.

On July 10, 1986, petitioners executed a consent on examination report which closed a Federal audit of petitioners' income tax return for the year 1983. Said consent resulted in a net decrease in petitioners' income of \$851.00. This Federal adjustment was factored into petitioners' New York deficiency for the taxable year 1983 on June 10, 1987.

Petitioners submitted in evidence a piece of correspondence received from ABC Video Enterprises, Inc. addressed to Rupert T. Burks which was a breakdown of Mr. Burks' total compensation for the year 1983 indicating basic salary of \$58,750.00, cost of group term life of \$183.70, taxable moving expense of \$51,091.83, nontaxable moving expense of \$12,482.53, for total wages and other compensation of \$122,508.06. There was no explanation on said form with regard to what the nontaxable moving expense reimbursement was or what items it pertained to.

Following the hearing in this matter, petitioners allegedly filed an amended U.S. Individual Income Tax Return for the year 1983 which presumably reflected the \$12,458.00 in nontaxable moving expense received from ABC Video Enterprises, Inc. and also claiming the full \$63,575.00 in moving expenses before adjustment on Federal Form 3903.

#### SUMMARY OF THE PARTIES' POSITIONS

Petitioners argue that if these Federal adjustments are adopted by the Division, petitioners are due a refund of \$1,321.00.

The Division argues that petitioners are not eligible to claim more for State purposes than they did for Federal purposes and are only entitled to moving expenses in the sum of \$49,121.00 as reflected on the 1983 Federal income tax return. Additionally, the Division argues that the \$12,484.00 received from ABC Video Enterprises, Inc. was compensation to Mr. Burks and was properly included in total income for 1983. The Division adds that there was no substantiation for changing the character of expenses on their Federal Form 3903 and that petitioners have not shown that the Form 1040X allegedly filed by petitioners for the year

1983 sometime after May 1, 1990 was in fact filed or that the Internal Revenue Service recognized and accepted the changes.

#### CONCLUSIONS OF LAW

A. The Federal adjustment to income for moving expenses incident to change of employment was adopted by the State of New York (see, Tax Law § 607[a]).

Tax Law § 612(a) indicates that the New York adjusted gross income of a resident individual means his Federal adjusted gross income as defined in the laws of the United States for the taxable year, with certain modifications not present herein.

B. An employee or self-employed person who moves to a new job location can deduct both the direct and indirect costs of moving (IRC § 217[a]). Direct moving expenses cover the reasonable cost of (1) moving household goods and personal effects from the old home to the new home and (2) travelling to the new job site (including meals and lodging) (IRC § 217[b][1]; Treas Reg § 1.217-2[b][1], [2]).

The following indirect moving expenses are deductible as well: (1) the expenses of travelling (including food and lodging) after obtaining employment, from the old residence to the general area of the new job to search for a new residence and returning; (2) the cost of food and lodging and temporary quarters in the general area of the new job site for up to 30 days while waiting to move to the new residence after obtaining employment; and (3) qualified residence sale, purchase or leasing expenses (IRC § 217[a], [b]; Treas Reg § 1.217-2[b][7]).

While direct moving expenses are completely deductible, there is a \$3,000.00 overall dollar limit on the deduction of indirect moving expenses (IRC § 217[b][3]; Treas Reg § 1.217-2[b][9]).

Given the provisions of the New York Tax Law contained in sections 607 and 612, and since New York has no other provision for the moving expense adjustment, it is reasonable to assume that the New York law is the same as the Federal law. Therefore, there is no reason to accept petitioners' request for a deduction in the sum of \$63,575.00 as a Federal adjustment to income for moving expenses as they declared on their 1983 New York income tax return.

Further, there is no basis for accepting the Federal Form 1040X filed by petitioners on or after May 1, 1990 which purported to reduce their wages by \$12,484.00 as nontaxable moving expenses received from ABC Video Enterprises, Inc. and increase their moving expenses to \$63,575.00. As correctly pointed out by counsel for the Division, there is no evidence that said form was filed with the Internal Revenue Service or that the Internal Revenue Service made an adjustment to petitioners' 1983 Federal income tax return or merely accepted it as an information return. If and when a report of Federal changes is received from the Internal Revenue Service, an amended New York return could be filed and adjustments made accordingly; however, based upon the evidence submitted by petitioners at this juncture, no such change can be allowed.

C. The petition of Rupert and Petronella Burks is denied and the Notice of Deficiency issued June 12, 1987, adjusted to account for the concession made by the Division (see Finding of Fact "2"), is hereby sustained.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE