

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

-CALVIN J. MCKIERNAN & PATRICIA A. MCKIERNAN : DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1982.

Petitioners, Calvin J. McKiernan and Patricia A. McKiernan, Box 15, Moriah Center, New York 12961, 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 1982 (File No. 64906).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, W.A. Harriman Campus, Albany, New York, on November 6 1986 at 10:45 A.M. Petitioners appeared by Calvin J. McKiernan. The Audit Division appeared by John P. Dugan, Esq. (Arnold Glass, Esq., of counsel).

ISSUE

Whether petitioners, residents of New York State, are liable for New York State personal income tax on monies earned in Vermont.

FINDINGS OF FACT

1. On July 1, 1985, the Audit Division issued to petitioners, Calvin J. McKiernan and Patricia A. McKiernan, a Statement of Audit Changes, asserting personal income due for the year 1982 of \$809.52 plus penalty of \$202.38 and interest of \$191.79 for a total due of \$1,203.69.

2. On the basis of information contained in their Federal tax return and that provided by petitioners, the Audit Division had computed their State income tax liability as follows:

| | |
|-------------------------|--------------------|
| Federal wages | \$22,128.00 |
| Standard deduction | 2,500.00 |
| Exemptions | 4,800.00 |
| New York taxable income | <u>\$14,828.00</u> |

3. The statement urged petitioners to amend their Federal and State tax returns, stating, in part, "since you own a home and paid real estate taxes, Vermont income tax and sales tax, I am sure you could take itemized deductions. All these taxes are easily verified and would reduce your New York tax liability plus your Federal liability. You still have time to amend 1982 through 1984."

4. Amended returns were not filed by petitioners. Therefore, on October 8, 1985, the Audit Division issued against petitioners a Notice of Deficiency asserting income tax due for the year 1982 in the amount of \$809.52 plus penalty and interest.

5. Mr. and Mrs. McKiernan are residents of Moriah Center, New York. Mr. McKiernan works in Vermont. His employer withholds Vermont and Federal income taxes. Petitioners have no income other than Mr. McKiernan's wages from work performed in Vermont.

6. Petitioners believed that since all their income was earned in Vermont, they were not required to file New York State income tax returns, and they did not do so. They also believed that the term "Total New York income" as used on line "3" of the New York State Resident Income Tax Return referred only to income earned in New York.

7. In 1982, petitioners paid Vermont income tax in the amount of \$530.66.

CONCLUSIONS OF LAW

A. That every resident of New York State who is required to file a Federal income tax return must file a New York State Resident Income Tax Return (Tax Law § 651[1][A]).

B. That for New York Statetax purposes, petitioners were required to report their Federal adjusted gross income as total income, including wages earned by Mr. McKiernan in Vermont. Petitioners then should have adjusted their income by making any additions **or** subtractions provided **for** under New York State Tax Law, **as** suggested in the statement **of** Audit Changes (Tax Law § 612). "Total New York income", as the term **is** used on line "3" of the Resident Income Tax Return, means Federal adjusted gross income **plus or** minus the New York adjustments. It does not mean money earned in New York State.


C. That inasmuch as petitioners paid Vermont income tax **of** \$530.66 on income earned entirely in Vermont, they are entitled to a resident tax credit in that amount (Tax Law § 620). The Audit Division **is** directed **to** recompute petitioners' tax liability accordingly.

D. That the petition of Calvin J. McKiernan and Patricia A. NcKiernan **is** granted to the extent indicated in Conclusion **of** Law "**C**"; that the Notice **of** Deficiency issued on October 8, 1985 shall be modified accordingly; and that in all other respects, the petition **is** denied.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987


PRESIDENT


COMMISSIONER


COMMISSIONER