

STATE OF NEW YORK
STATE TAX COMMISSION

Miller
P.I. - 1970

In the Matter of the Petition

of

JAMES L. MILLER

HARRIETT L. MILLER

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1964

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

Decision Pub
CCH *98*
99-243

State of New York
County of Albany

Lynn Puorto

, being duly sworn, deposes and says that

she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of March, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon James and
L.

Harriett L. Miller (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. James L. Miller
15 Field Road
Riverside, Connecticut

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

10th day of March, 1970.

Frank Wright

Lynn Puorto

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES L. & HARRIET L. MILLER

For a Redetermination of a Deficiency or
a Refund of PERSONAL
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1964

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

LYNN PUORTO, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of March, 1970 she served the within Notice of Decision (or Determination) by (certified) mail upon Eric Pusinelli & Co., Att. Lloyd Deas (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Eric Pusinelli and Co. CPA's, 19 West 44th Street, New York, New York, Att. Lloyd Deas 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

10th day of March, 1970.

James Wright

Lynn Puerto

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
JAMES L. AND HARRIETT L. MILLER
For a Redetermination of a Deficiency
or for Refund of Personal Income Tax
under Article 22 of the Tax Law for
the Year 1964

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DECISION

The taxpayers having filed a petition pursuant to Section 722 of the Tax Law for a redetermination of a deficiency determined under date of April 24, 1967, of personal income taxes under Article 22 of the Tax Law for the year 1964 and a hearing having been duly held before Vincent P. Molineaux, Hearing Officer, and the file pertaining to said assessment having been duly examined and considered,

The State Tax Commission hereby

FINDS:

(1) The sole issue raised at the hearing is the allocation to New York State of a sum of \$19,500 received allegedly as salary. It is assumed by taxpayer, and not contested by the Department, that such sum should be allocated separately from other sums received during the same year from the same employer.

(2) The taxpayer is a non-resident of the State of New York.

(3) The asserted deficiency is in the amount of \$1157.62 plus interest.

(4) The deficiency is based on the addition to income from New York sources of \$26,769.49 as follows: \$1,000, representing one-third allocation of \$3,000 salary received from Mohasco

Industries on January 1, 1964; \$19,500 representing 100% of other amounts received from Mohasco Industries from February through August 1964; \$5,925.36 representing an allocable portion of salary received from Kingston Carpeting Inc. from August through December 1964; and \$344.13 of other income allocable wholly to New York. Certain contributions were also disallowed in the determination and a conforming adjustment in the allowance of itemized deductions was made, neither of which is contested.

(5) The \$19,500 here in question was received from Mohasco Industries after the taxpayer resigned from his position with that company.

(6) The taxpayer asserts that the income in question was not for past services and refuses to come forward with any data on which an allocation based on past services could be made (see Reg. 20 NYCRR 131.18).

(7) The taxpayer asserts that the income in question was for current services as a consultant to his successor in his former position and for an unwritten agreement not to compete with his former employer. The taxpayer asserts that he received three telephone calls at his home in Connecticut for advice under this agreement. The employer stated, in a letter, that no services were actually performed under this agreement and the taxpayer's presence was not required in New York State.

Upon the foregoing findings and all the evidence in the case, the State Tax Commission hereby

DECIDES:

A. The income of \$19,500 here in dispute was attributable to employment after January 1964 by Mohasco Industries Inc.. Any services after January 1964 (if any, and even if actually performed outside the State) were not required by the employer

to be performed outside the State and so were not subject to allocation (See Reg. 20 NYCRR 131.16).

B. The allocation of the income earned in January 1964 and the allocation of the income earned after 1964 may be separately computed even though received from the same employer. The drastic change in taxpayer's duties upon retirement in January 1964 require such a separation to arrive at a fair and equitable apportionment and allocation (Tax Law Sec. 632(c); Reg. 20 NYCRR 131.21).

C. The deficiency as set forth in paragraph number three is affirmed in its entirety together with such interest, if any, as may be due pursuant to Section 684 of the Tax Law.

Dated: Albany, New York

STATE TAX COMMISSION

March 9, 1970


PRESIDENT


COMMISSIONER


COMMISSIONER