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STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 31, 1972

Clark D. & Judith H. Sorensen
194 Vreeland Avenue
Mutley, New Jersey 07110

Dear Mr. & Mrs. Sorensen:

Please take notice of the **DECISION ON DEFAULT** of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) **690** of the Tax Law, any proceeding in court to review an adverse decision must be commenced within **4 Months** from the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed in accordance with this decision or concerning any other matter relative hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very truly yours,

Nigel G. Wright

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CLARK D. & JUDITH H. SORENSEN

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) 1967

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

State of New York
County of Albany

Martha Funaro , 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 31st day of July , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Clark D. & Judith H. Sorensen (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Clark D. & Judith H. Sorensen
194 Vreeland Avenue
Nutley, New Jersey 07110

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

31st day of July , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
CLARK D. & JUDITH H. SORENSEN : DECISION ON
for a Redetermination of a Deficiency : DEFAULT
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1967. :

Clark D. and Judith H. Sorensen filed a petition for a redetermination of a deficiency issued under date of May 26, 1969, in personal income tax under Article 22 of the Tax Law for the year 1967.

A hearing was duly scheduled before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Room 779, 80 Centre Street, New York City, on May 16, 1972, at 10:15 A.M. Neither the petitioners nor anyone on their behalf appeared. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq.

ISSUE

The issue in this case is whether a nonresident is taxable when he claims he is unfairly deprived of certain benefits accruing to residents of New York.

FINDINGS OF FACT

1. Mr. Sorensen is a resident of New Jersey. During the early part of 1967 he was employed by Esso Math & Systems, Inc., 60 West 49th Street, New York City. In May, 1967, he ceased that employment and began employment with a business firm in East Orange, New Jersey.

2. Petitioners filed a New York State income tax nonresident return. On this return, Mr. Sorensen assigned to New York only

the salary received from Esso Math & Systems, Inc. and then allocated that on the basis of days worked in and out of the State during the whole year including the time he worked for the New Jersey business firm.

3. Petitioners have not provided any evidence that the salary received from Esso Math & Systems, Inc. was received for services performed in any part outside of New York State.

4. The deficiency is based upon, including in New York income, the total salary received from Esso Math & Systems, Inc. The deficiency amounts to \$193.24 with \$12.91 interest for a total of \$206.15.

5. The petitioners were duly notified of the hearing at their last known address, and after they failed to appear they informed the hearing officer by letter that they refused to appear.

CONCLUSIONS OF LAW

The petitioners' assertion that the tax on nonresidents is unconstitutional is without foundation. Travis v. Yale Mfg. Co., 1920, 252, U.S. 60; Goodwin v. State Tax Comm. 1955, 1 N.Y. 2d 680 app. dism. 352 U.S. 805.

The argument that a tax on a nonresident is invalid unless the nonresident gets benefits from the State has been rejected by various courts, including the United States Supreme Court. (See Stephan v. Delaware State Tax Comm., 1968, 245 A 2d 552, app. dism. 394 U.S. 573; Kiker v. Philadelphia, 31 A 2d 289; Morse v. Johnson, Maine Supreme Court, 1971; C.C.H. Maine State Tax Rep. ¶200-048.) Petitioners own state of residence, New Jersey, imposes an income tax on nonresidents at present and intends to continue to do so (Report of the New Jersey Tax Policy Commission C.C.H. New Jersey State Tax Rep. ¶200-553 at page 10,368). Petitioners' complaint that it is unfair to have a higher tuition rate for nonresidents

than for residents at the State University even if true cannot justify a refusal to pay taxes.

The petition is denied. The deficiency is affirmed together with such additional interest as may be due under section 684 of the Tax Law.

DATED: Albany, New York
July 31, 1973

STATE TAX COMMISSION

Norman Gellman

COMMISSIONER

John Bradley

COMMISSIONER

Milton Kerner

COMMISSIONER