

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
KENNETH E. HOOGS and
LORRAINE E. HOOGS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~1970~~ 1970:

State of New York
County of Albany

Donna Scranton, 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 September, 1976, she served the within Notice of Decision by (certified) mail upon Kenneth E. & Lorraine E. Hoogs (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. Kenneth E. Hoogs
875 Sumner Avenue
Syracuse, New York 13210
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of the~~) 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 September, 1976

Donna Scranton

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 10, 1976

TELEPHONE: (518) 457-3850

Mr. and Mrs. Kenneth E. Hoogs
875 Sumner Avenue
Syracuse, New York 13210

Dear Mr. and Mrs. Hoogs:

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

Please take further notice that pursuant to
Section ~~(a)~~ **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

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. They
will be referred to the proper party for reply.

Very truly yours,

PAUL E. COBURN
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: ~~RECEIVED BY THE TAXING BUREAU~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
KENNETH E. HOOGS and	:	DECISION
LORRAINE E. HOOGS	:	
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

Petitioners, Kenneth E. Hoogs and Lorraine E. Hoogs, residing at 875 Sumner Avenue, Syracuse, New York 13210, filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970. (File No. 0-0001611). A formal hearing was held before Julius E. Braun, Esq., Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on April 1, 1976, at 9:15 A.M. Petitioner appeared pro se and for Lorraine E. Hoogs, his wife. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weis, of Counsel).

ISSUE

Whether income from a fellowship received by petitioner, Kenneth E. Hoogs, during the year 1970 was properly excluded from gross income.

FINDINGS OF FACT

1. Petitioners, Kenneth E. Hoogs and Lorraine E. Hoogs, timely filed a New York State income tax return for the year 1970. Claimed therein was a deduction of \$3,600.00 as a fellowship grant.

2. On May 21, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Kenneth E. Hoogs and Lorraine E. Hoogs, disallowing a deduction of \$3,600.00 from gross income. Accordingly, a Notice of Deficiency was issued in the amount of \$128.23 plus interest of \$16.15 for a total of \$144.38.

3. Petitioner, Kenneth E. Hoogs, was first an intern and then for the last six months of 1970, a resident physician at the Upstate Medical Center, a unit of the State University of New York at Syracuse. There he remained in training to acquire skills and experience in the field of urology so as to be certified by the American Board of Urology. The educational requirements for certification as stated by the Directory of Approved Internships and Residencies 1969, published by the American Medical Association, included personal instruction at the bedside and in the operating room, teaching rounds, departmental conferences, demonstrations, lectures, and close and continuing supervision of all phases of the residents' work. According to said directory, the most important aspect of residency training, aside from the daily contact with patients and the attending staff and participation in an organized educational program is the assumption of responsibility.

4. Petitioner, Kenneth E. Hoogs's training would commence at 7:00 A.M. every week day. He would be on call and make rounds one out of three weekends and was required to spend every third night in the hospital. The program was the same for the intern as for the resident in training except that as time went on, the latter acquired greater skill and experience which he would then impart to other students, interns and residents who were involved in the same training program. Such a program

normally extended over a four year period in order to acquire specialty in the field of urology. They were supervised by one of three attending physicians who were urological surgeons. In 1970 there were some 250 urology patients serviced by the staff which included the petitioner, two other resident physicians and two students. There were approximately 20 patients in the ward at one time. The petitioner also spent four hours a day assisting in surgery and spent two afternoons a week at the out patient clinic. His stipends were increased from time to time to compensate for increased living costs and size of family.

CONCLUSIONS OF LAW

A. That stipends received as compensation for rendering of services must be distinguished from those received in the training of the individual which stipends may be deducted from gross income within limits.

B. That the stipend received by petitioner, Kenneth E. Hoogs, was for services. Although he was not yet qualified in the field of urology, nevertheless he was capable and did render services of some value while being further trained as intern and resident physician within the meaning of section 117 of the Internal Revenue Code.

C. That the petition of Kenneth E. Hoogs and Lorraine E. Hoogs is denied and the Notice of Deficiency issued May 2, 1973, is sustained.

DATED: Albany, New York
September 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH E. HOOGS and
LORRAINE E. HOOGS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year (XXXXXX) 1970.:

State of New York
County of Albany

Carmen Mottolese, 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 22nd day of October, 1976, she served the within
Notice of Decision by ~~(verified)~~ mail upon Kenneth E. Hoogs &
Lorraine E. Hoogs
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Kenneth E. Hoogs
875 Sumner Avenue
Syracuse, New York 13210
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of the)~~ petitioner.
~~XXXXXXXXXXXXXXXXXXXX~~

Sworn to before me this

22nd day of October, 1976

Carmen Mottolese

Janet Muel

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

LHM
9-15-76
MIB

Mr. and Mrs. Kenneth E. Hoogs
875 Summer Avenue
Syracuse, New York 13210

1st Notice 9-15
2nd Notice 9-21
Return 9-30

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SHAO T. HSU and CHARLOTTE C. HSU

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(xx)~~ 22 of the
Tax Law for the Year(s) ~~xxx~~ ~~xxxx~~ ~~xxxx~~ ~~xxxx~~
1967, 1968, 1969 and 1970.

State of New York
County of Albany

Catherine Steele, 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 14th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Shao T. Hsu and Charlotte C. Hsu ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Shao T. Hsu
11 Tanager Court
Potomac, Maryland 20854
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ ~~xxx~~ ~~the~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of)~~ ~~xxx~~ ~~the~~ petitioner.

Sworn to before me this

14th day of September, 1976

Catherine Steele

Janet Mack



TELEPHONE: (518) 457-3850

TA-1.12 (1/76)

(2)

FINDINGS OF FACT

1. Petitioners, Shao T. Hsu and Charlotte C. Hsu, filed joint nonresident income tax returns for the years 1967, 1968, 1969 and 1970.

2. The Income Tax Bureau, after audit, made a determination that in the years 1967 through 1970, the petitioners, Shao T. Hsu and Charlotte C. Hsu, were taxable as New York residents and issued notices of deficiency as follows:

	<u>Deficiency</u>	<u>Interest</u>	<u>Total</u>
1967	220.77	58.82	273.59
1968	1830.18	328.10	2158.28
1969	1258.44	216.20	1474.64
1970	2686.90	300.40	2987.30

The Income Tax Bureau held that all of petitioner's income was subject to New York State income tax. Part of the itemized deductions taken by petitioners on their Federal income tax return was disallowed by the Income Tax Bureau. Based upon the assumption that petitioner's total income was taxable in New York, the Income Tax Bureau adjusted New York itemized deductions as indicated on statements of audit changes dated April 10, 1972 for the years 1967 and 1968 and February 26, 1973 for 1969 and 1970.

3. Petitioners, Shao T. and Charlotte C. Hsu, timely filed petitions for redetermination of deficiency or for refund of personal income tax for the years 1967, 1968, 1969 and 1970.

(3)

They contested their designation as New York residents and disagreed with the reduction in itemized deductions allowable on the New York State income taxes.

4. Petitioner, Shao T. Hsu, is a professor of mechanical engineering specializing in the area of heat transfer. He was a full professor at the University of Maryland at College Park, Maryland during the years 1967 through 1970. He carried a full schedule there, teaching candidates for post-graduate degrees and doing research work on a governmental project. In addition, in early 1967, the petitioner, Shao T. Hsu, accepted an invitation from the New York Institute of Technology in New York City to assist them in setting up a course of study in mechanical engineering. He agreed to serve as a part time professor, spending one day per week at the New York Institute. Each week the petitioner, Shao T. Hsu, travelled from Baltimore, Maryland to New York City. Sometimes he was accompanied by his wife, the petitioner, Charlotte C. Hsu. Most times the petitioners travelled by airline to New York and back. The petitioner had his own automobile parked at the air terminal. He would drive to New York Institute of Technology, perform his teaching chores, drive either directly to the airport and return to Maryland, or he would drive to Long Island and spend the night in his house. Petitioners had purchased a house in

(4)

Long Island early in 1967, had it furnished, and occupied the house no more than two days per week during the entire period. Petitioner, Charlotte C. Hsu, never came to the New York residence alone nor remained in New York when petitioner, Shao T. Hsu, returned to Maryland after an overnight stay in the Long Island house. Petitioner's daughter lived with her parents in Maryland and then attended Wellesley College in Boston, Massachusetts. All members of the family had some clothing and personal possessions in the Long Island house during the four year period 1967 through 1970.

5. Petitioners, Shao T. Hsu and Charlotte C. Hsu, aggregated less than 183 days per year in New York State during each of the years 1967, 1968, 1969 and 1970. Petitioners maintained a permanent place of abode in Long Island, New York. They were domiciled in Maryland where they owned and occupied a \$200,000.00 home and where petitioner, Shao T. Hsu, was a full time tenured professor at the University of Maryland.

CONCLUSIONS OF LAW

A. That the petitioners, Shao T. Hsu and Charlotte C. Hsu, were not residents as defined in Tax Law, Section 605(a)(2) and were non-residents under Tax Law Section 605(b).

B. That the petitioners failed to meet the burden of proof with respect to unsubstantiated itemized deductions on their Federal income tax returns for 1969 and 1970 with the exception of deductions for travel and commuting. To the extent allocable to New York State income, travel and commuting deductions shall be allowed.

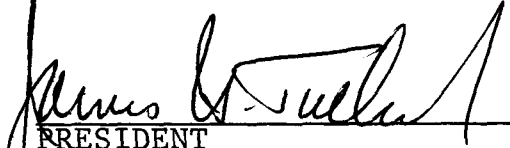
(5)

C. That the petition of Shao T. Hsu and Charlotte C. Hsu is granted to the extent that the petitioners are hereby declared to be non-residents for income tax purposes for the years 1967 through 1970 inclusive.

D. That the Income Tax Bureau shall redetermine the petitioners' New York State income tax deficiency for the years 1967, 1968, 1969 and 1970 on the basis that the petitioners were non-residents and that their reported Federal earnings must be allocated to New York and Maryland respectively. The Income Tax Bureau is directed to accordingly modify the notices of deficiency dated April 10, 1972 and February 26, 1973; and that, except as so granted, the petition is in all other respects denied.

DATED: ALBANY, NEW YORK
September 14, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER