

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JUDITH A. KEMMER

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 ~~(XXXXXX)~~ 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 25th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Judith A. Kemmer

~~(representative of the)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mrs. Judith A. Kemmer
Twin Willows
Hamburg, New York 14075

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)~~ ~~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
25th day of August, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JUDITH A. KEMMER
for a Redetermination of a Deficiency
or for Refund of Personal Income Taxes:
under Article 22 of the Tax Law for
the Year 1970.

DECISION

Judith A. Kemmer, residing at Twin Willows, Hamburg, New York 14075, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the year 1970.

Said deficiency was asserted by a notice issued January 28, 1974, under File No. 1-89850842 in the amount of \$84.20 plus interest of \$14.07 for a total of \$98.27.

In lieu of a hearing, petitioner submits her case to the Commission on the file of the Income Tax Bureau.

Said file has been duly examined and considered.

ISSUE

The issue in this case is whether a resident of New York who has worked in another State and who is liable for income taxes on salary income to New York State and also to both the other State

and a political subdivision of that State can, when computing a credit under section 620 of the Tax Law for both of the out-of-State taxes, consider the limitation provisions of section 620(b) to apply separately to each out-of-State tax, with the result that the sum of the credits claimed for both out-of-State taxes exceeds the New York tax on the double-taxed items of income as measured by the said limitation provisions of section 620(b).

FINDINGS OF FACT

1. Petitioner and her husband were residents of Prince Georges County, Maryland, from January 1 to September 30, 1970. They were residents of Angola, Erie County, New York, for the entire year.

2. Petitioner, with her husband, filed a Maryland resident income tax return. This computed a tax due from petitioner alone to the State of Maryland of \$180.60 and, on the same form, a tax due to Prince Georges County of \$90.30.

3. Petitioner, with her husband, filed a New York resident income tax return including all income earned during the year. This computed for petitioner alone a tax due, less statutory credit, of \$299.45.

4. Petitioner claimed credits for the taxes paid to both the State of Maryland and to Prince Georges County of \$180.60 and \$90.30 respectively for a total of \$270.90.

5. The limitation required by section 620(b)(1) of the Tax Law on the amount of the credit for other state's taxes is properly computed by the ratio of \$5,918.50 divided by \$9,492.50, which multiplied by the New York tax otherwise due of \$299.45 is \$186.70. Petitioner had erroneously computed a limitation of \$189.70 but is not contesting this.

6. The deficiency in issue grants a credit for out-of-State taxes for both the Maryland state tax and the Maryland local tax but limits the total of these credits by the limitation of \$186.70.

The petitioner had taken credits for both the state and local taxes in full since each tax, \$180.60 and \$90.30, had been, separately considered, less than the limitation of \$186.70.

CONCLUSIONS OF LAW

The computations prepared by the petitioners must be rejected.

The purpose of the credit is to avoid the double taxation of items of income by eliminating that amount of tax which New York itself imposes on such items of income. No attempt is made to give the taxpayer an amount of credit which would equal the tax of the other jurisdiction where that tax is higher than the New York tax. To do so would in effect give a credit which not only would offset the New York tax on the double taxed item of income but would give an excess credit which would offset a New York tax

properly imposed on other items of income which are not double taxed.

The amount of New York tax attributed to each item of income is computed through the calculations described in the limitation provisions of section 620(b). Such amount of tax will be the lesser of the tax computed on only the items of income at the highest bracket rate applicable to the taxpayer (620(b)(2)) or the tax computed on only the items of income computed at the average or effective rate of tax imposed on the taxpayer (620(b)(1)).

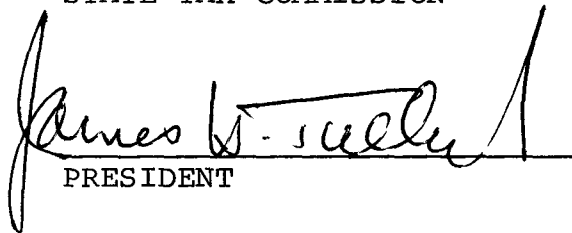
It should be clear from the above that the limitation provisions of section 620(b) can be applied only once with respect to each item of income. That is all that is needed to correctly compute and account for the New York tax on the double taxed items of income. It must obviously be improper to recompute a second time the New York tax on the same items of income and use that as a basis for a second credit.

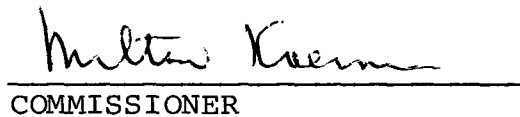
Other states have reached the same conclusion with respect to their own credit provisions. Appeal of Salant - Calif. State Board of Equalization May 10, 1967, CCH Calif. Tax Rep. transfer binder par. 203-650.

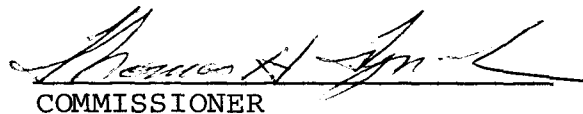
The deficiency is correct as computed and is due together with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
August 25, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER