

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DONALD E. & WINIFRED W. PERRY

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 (s) ~~on~~ Period (s) 1968.:

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 29th day of November, 1976, she served the within Notice of Decision by (certified) mail upon Donald E. & Winifred W. Perry ~~(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. Donald E. Perry
7003 Highfield Road
Fayetteville, New York 13066
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

29th day of November, 1976.

Catherine Steele

Just Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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Taxes under Article (x) 22 of the :
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~~(s) or Period(s)~~

State of New York
County of Albany

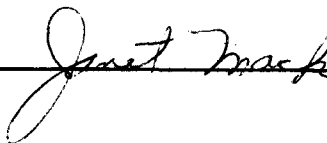
Catherine Steele, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of November, 1976, she served the within
Notice of Decision by (certified) mail upon John E. Morrissey, Jr.

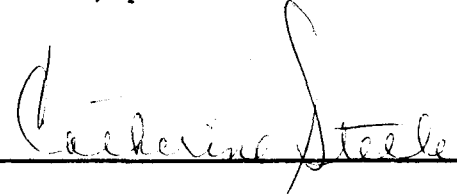
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John E. Morrissey, Jr., Esq.
Mackenzie, Smith, Lewis, Michell & Hughes
600 Onondaga Savings Bank Building
Syracuse, New York 13202
and by depositing 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

29th day of November, 1976







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

November 29, 1976

TELEPHONE: (518) **457-3850**

Mr. & Mrs. Donald E. Perry
7003 Highfield Road
Fayetteville, New York 13066

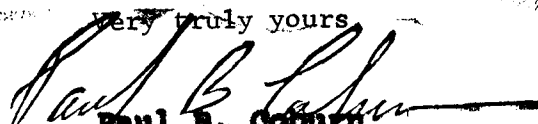
Dear Mr. & Mrs. Perry:

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

Please take further notice that pursuant to
Section(5) **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 B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

In the Matter of the Petition :
of :
DONALD E. & WINIFRED W. PERRY :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1968. :

Petitioners, Donald E. & Winifred W. Perry, 7003 Highfield Road, Fayetteville, New York 13066, petitioned for a redetermination of deficiency in personal income tax under Article 22 of the Tax Law for the year 1968.

A formal hearing was held at the offices of the State Tax Commission, Syracuse, New York, on July 23, 1974, before L. Robert Leisner, Hearing Officer. The taxpayers were represented by John E. Morrissey, Jr., Esq., and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of counsel).

Were payments received by an employee from his employer, in connection with a job transfer from Connecticut to New York, attributable to Connecticut or to New York income?

1. Petitioners, Donald E. and Winifred W. Perry, timely filed New York State income tax returns for the year 1968.

2. A Notice of Determination of deficiency in personal income tax for the year 1968 was issued on May 24, 1971, against the taxpayers under File No. 29004923.

3. The taxpayers petitioned for redetermination of the deficiency.

4. The taxpayers ended their residence in Trumbull, Connecticut, on February 14, 1968, and established a New York residence in Fayetteville, New York, on February 15, 1968.

5. Donald E. Perry took up his work at Liverpool, New York, on January 8, 1968, but continued his Connecticut residence until February 14, 1968. From January 8, until February 15, 1968, he worked thirty days, twenty-two in the State of New York and eight in other states.

6. On January 5, 1968, Mr. Perry received \$7,333.34 from the Bridgeport, Connecticut, division of General Electric, the transferring division, which was based on taxpayer's base salary at Bridgeport and was for expenses in moving from Connecticut. This allowance was for loss of items in Connecticut such as pre-paid country club dues, furnishings, draperies, etc. left in Connecticut which could not be taken or used.

7. From January 8, 1968, until February 16, 1968, Mr. Perry received \$519.28 as reimbursement for travel and living expenses. This was from the New York office; eight days of thirty were worked in other states. Taxpayer estimated one-half of this expense was for out-of-state work.

8. After moving from Connecticut, Mr. Perry received \$2,537.95 reimbursement for legal costs and broker's fees in the sale of his Connecticut residence.

9. Mr. Perry also received \$322.50 reimbursement of legal fees in buying his home in Fayetteville, New York, from the New York division.

CONCLUSIONS OF LAW

A. The taxpayer's receipt of \$7,333.34 from his employer on January 5, 1968, as a transfer allowance, represents reimbursed moving expense attributable to a new bona fide place of employment within New York State. It is, therefore, deemed to be derived from, or connected with, New York sources and is taxable as New York income.

B. Travel reimbursement for taxpayer's work of eight days out of New York State while still a Connecticut resident is not taxable by New York State. The rest of the reimbursement, or 22/30ths of the \$519.28, is taxable.

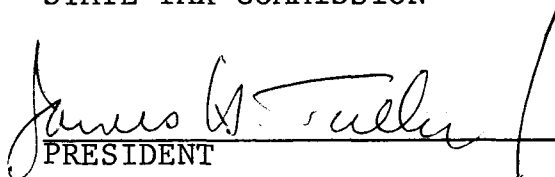
C. Taxpayer's receipt of closing expenses for the Fayetteville, New York, home is fully taxable. Taxpayer's receipt of closing expenses for the Connecticut house received after February 16, 1968, when he had moved to New York is also fully taxable.

D. The deficiency in income tax shall be recomputed to reflect the adjustment made by paragraph "B" above. The deficiency as modified is sustained, and taxpayer's petition is otherwise denied.

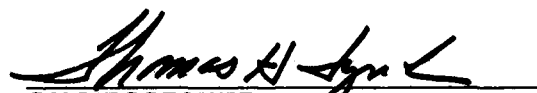
E. Pursuant to the Tax Law, interest shall be added to the tax due until paid.

DATED: Albany, New York
November 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER