

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK M. & KATHLEEN C. TRAPNELL :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(3)~~ 22 of the :
Tax Law for the Year ~~(s)~~ ~~or~~ ~~Period(s)~~ 1967 :

State of New York
County of Albany

Denise Burke , 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 27th day of September , 1976, she served the within Notice of Decision by ~~(certified)~~ mail upon Frederick M. & Kathleen C.

Trapnell ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Frederick M. & Kathleen C. Trapnell
26 Holland Park, Flat #1
London Wil, England

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

27th day of September , 1976.

Denise Burke

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FREDERICK M. & KATHLEEN C. TRAPNELL :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(22)~~ 22 of the :
Tax Law for the Year ~~(or Period)~~ 1967 :

State of New York
County of Albany

Denise Burke , 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 27th day of September , 1976, she served the within Notice of Decision by (certified) mail upon Noel, De Cordova, Jr., Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Noel De Cordova, Jr., Esq.
Van DeWater and Van DeWater
54 Market St., P.O. Box 112
Poughkeepsie, N.Y. 12601 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

27th day of September , 1976

Denise Burke

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

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

September 27, 1976

Frederick M. & Kathleen C. Trapnell
26 Holland Park, Flat #1
London W11, England

Dear Mr. & Mrs. Trapnell:

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

Please take further notice that pursuant to Section ~~690~~ **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.

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,
Frank J. Puccio
Frank J. Puccio
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:
Noel De Cordova, Jr., Esq.
Van Dewater and Van Dewater
54 Market St., P.O. Box 112
Poughkeepsie, N.Y. 12601
Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
FREDERICK M. AND KATHLEEN C. TRAPNELL : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Year 1967. :
:

Petitioners, Frederick M. and Kathleen C. Trapnell, residing at 26 Holland Park, Flat #1, London, W. 11., England, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1967. (File No. 8-29850561). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 10, 1976, at 10:45 A.M. Petitioner appeared by Noel deCordova, Jr. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUES

I. Is income received by the petitioner, which constitutes prior years' income earned abroad while the taxpayer was a non-resident, taxable in the year of receipt?

II. Are income taxes paid to a foreign taxing agency allowable itemized deductions?

1. Petitioners, Frederick M. and Kathleen C. Trapnell, filed a joint New York State income tax resident return for 1967, on February 17, 1969. The period covered by said return was January 1, 1967 to June 30, 1967, as the petitioners moved to the United Kingdom on July 1, 1967, where they claimed residency. On this return, they reported total income of \$38,604.00 and deductions of \$17,583.00.

2. Petitioners, Frederick M. and Kathleen C. Trapnell, subsequently filed an "amended" New York State income tax resident return for 1967 on August 26, 1970. This amended return also covered the period January 1, 1967 to June 30, 1967. On the amended return, the petitioners reported total income of \$26,299.00 and deductions in the sum of \$5,291.00.

3. On May 24, 1971, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against petitioners, Frederick M. and Kathleen C. Trapnell, for the year 1967 in the sum of \$783.56 tax and interest due. The Income Tax Bureau disallowed an itemized deduction for income taxes, which resulted in the additional tax due.

4. Petitioner, Frederick M. Trapnell, worked and resided in the United Kingdom from August, 1961 to June, 1964. In 1967, the United Kingdom Inland Revenue assessed petitioner \$12,305.00 for taxes due during his period of residency. He accordingly, paid the assessment in full during 1967.

5. Petitioner, Frederick M. Trapnell, was employed by IBM Corp. during the period August, 1961 to July, 1967. Upon petitioner's acceptance of an assignment in the United Kingdom, an agreement was made with his employer which stipulated that IBM would compensate him for any personal income taxes payable to the United Kingdom which are in excess of the Federal and state taxes he would be required to pay in the United States. In 1967, the IBM Corp. paid the petitioner \$8,475.00 in accordance with their agreement and included this compensation on his 1967 withholding tax statement. The entire \$12,305.00 was not reimbursed, as only \$8,475.00 represented taxes payable to the United Kingdom over and above those so payable in the United States.

6. Petitioner, Frederick M. Trapnell, claimed a deduction for income taxes paid to the United Kingdom in the sum of \$12,305.00 on his original New York State resident income tax return for 1967. On his amended return for said year, he excluded from total income \$12,305.00 on the grounds that this amount represented income earned in prior years although received in 1967. He did not claim a deduction for income taxes paid to the United Kingdom on this return.

CONCLUSIONS OF LAW

A. That the petitioners, employing the cash receipts and disbursements method of accounting as set forth in section 446 of the Internal Revenue Code, must include all items which constitute gross

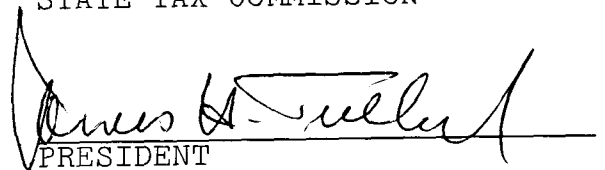
income in the taxable year in which actually or constructively received. Also, that the income received by the petitioners which constitutes prior years' income earned abroad is gross income within the meaning of section 61 of the Internal Revenue Code.

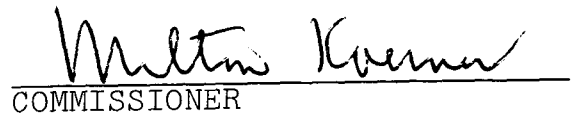
B. That income taxes paid to foreign taxing agencies must be deleted from Federal itemized deductions within the meaning and intent of section 615(c)(1) of the Tax Law.

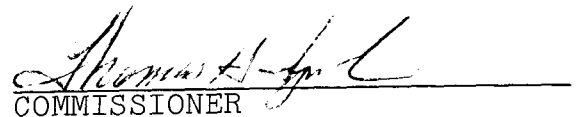
C. That the petition of Frederick M. and Kathleen C. Trapnell is denied and the Notice of Deficiency issued May 24, 1971 is sustained.

DATED: Albany, New York
September 27, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER