

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN CASSAVETES AND GENA R. CASSAVETES

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) or ~~Period(s)~~ :
1969 & 1970

State of New York
County of Albany

Marsina Donnini, 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 7th day of July, 1977, she served the within Notice of Decision by (certified) mail upon John Cassavetes and Gena R. Cassavetes ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John Cassavetes and Gena R. Cassavetes
6363 Wilshire Boulevard, Suite 600
Los Angeles, California 90048 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

7th day of July, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN CASSAVETES AND GENA R. CASSAVETES

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) or Period(s) :
1969 & 1970

State of New York
County of Albany

Marsina Donnini, 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 7th day of JULY, 1977, she served the within
Notice of Decision by (certified) mail upon James A. Cohen Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: James A. Cohen, Esq.
Suite 1505
9000 Sunset Boulevard
Los Angeles, Calif.
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

7th day of July, 1977.

Marsina Donnini

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

July 7, 1977

TELEPHONE: (518) ~~457-1723~~

John Cassavetes and Gena R. Cassavetes
6363 Wilshire Boulevard, Suite 600
Los Angeles, Calif. 90048

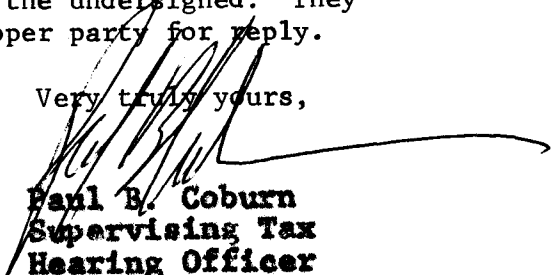
Dear Mr. and Mrs Cassavetes:

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

Please take further notice that pursuant to
Section(2) **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 OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOHN CASSAVETES and GENA R. CASSAVETES	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969 and 1970.	:	

Petitioners, John Cassavetes and Gena R. Cassavetes, 6363 Wilshire Boulevard, Suite 600, Los Angeles, California 90048, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969 and 1970. (File No. 01041).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 19, 1976 at 1:30 P.M. Petitioners appeared by James A. Cohen, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Michael Weinstein, Esq. of counsel).

ISSUE

Whether petitioner, John Cassavetes, a nonresident actor, director and writer, properly apportioned and allocated his income from such activities within and without New York State.

FINDINGS OF FACT

1. Petitioners, John Cassavetes and Gena R. Cassavetes, filed New York State income tax nonresident returns for the years 1969 and 1970, asserting \$667.00 and \$1,660.00 in New York income respectively, and stating an overpayment of tax of \$22.00 in 1969 and \$28.00 in 1970.

2. On March 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes to petitioners, stating additional personal income tax due for the years 1969 and 1970 of \$42,490.36, plus penalty pursuant to section 685(b) of the Tax Law and interest to that date. All of the additional income was attributable to two motion pictures, "Faces" (\$139,969.00 in 1969 and \$87,478.00 in 1970) and "Husbands" (\$100,000.00 in 1970). Accordingly, a Notice of Deficiency was issued to petitioners, John Cassavetes and Gena R. Cassavetes, on March 26, 1973, stating additional tax due of \$42,490.36, plus a penalty of \$2,124.52 and interest to that date of \$6,039.34, for a total of \$50,654.22.

3. Petitioner, John Cassavetes, wrote the play "Faces," and then rewrote it as a screenplay while a resident of California. He directed the motion picture "Faces," and all his activities in pre-production, directing and post-production

activities were conducted in California. Petitioner, Gena R. Cassavetes, acted in the motion picture "Faces". All her services as an actress were performed in California. Petitioners, John Cassavetes and Gena R. Cassavetes, reported on their Federal returns wages received from Faces, Inc. of \$139,969.00 for the year 1969 and \$87,478.00 for the year 1970.

4. Petitioner, John Cassavetes, wrote the screen play, acted in and directed the motion picture "Husbands," for which he received \$100,000.00 in 1970. This amount was pursuant to a written agreement between the petitioner, John Cassavetes, and The Husbands Company dated January 1, 1969.

5. The \$100,000.00 received by petitioner, John Cassavetes, for these services is attributable as follows: \$10,000.00 for writing the script, \$30,000.00 for directing the motion picture and \$60,000.00 for acting in it. The sum paid for services as an actor was also paid to the two other principal actors, Ben Gazzara and Peter Falk, pursuant to January 1, 1969 agreements with The Husbands Company.

6. The script for the motion picture "Husbands" was written in California. The motion picture was filmed in New York City, New York and London, England. Filming in New York commenced on January 20, 1969 and ended on March 30, 1969. A

total of forty-seven days was spent filming the motion picture in New York. Petitioner, John Cassavetes, performed as an actor and a director on each of the forty-seven days. Filming commenced in London on April 16, 1969 and ended on July 10, 1969. A total of thirty-seven days was spent in "shooting" in London. Petitioner, John Cassavetes, directed on each of those days and performed services as an actor on twenty-nine of those days. No evidence regarding activities during the period June 8, 1969 to July 9, 1969 was adduced.

7. Petitioner, John Cassavetes, commenced pre-production of the motion picture "Husbands" on October 1, 1968. The pre-production ended on January 19, 1969. During this period, twenty-six days were spent on pre-production activities in California and forty-seven days were spent in New York.

8. After completion of filming in London, petitioner, John Cassavetes, returned to California and engaged in post-production activities at Universal Studios for a period of twenty-three days between August 1, 1969 and September 1, 1969.

9. Petitioner, John Cassavetes, spent an additional six days in New York in September of 1969 recutting the film "Husbands" at the request of Columbia Pictures.

10. Petitioner, John Cassavetes, had \$4,170.08 withheld by The Husbands Company for New York personal income tax in 1970 on the \$100,000.00 paid to petitioner that year. Such withholding did not appear on the nonresident return for 1970 of petitioners, John Cassavetes and Gena R. Cassavetes.

CONCLUSIONS OF LAW

A. That none of the additional income from the motion picture "Faces" attributed by the Income Tax Bureau to the petitioners, who were nonresidents of New York in 1969 and 1970, is attributable to New York sources.

B. That the \$100,000.00 received by petitioner, John Cassavetes, in 1970 from The Husbands Company is apportionable and allocable to New York, based on the books and records kept in conjunction with the making of the motion picture "Husbands". (Tax Law §632(c) and 20 NYCRR 131.13(a)). That based on such books and records 38.13% of the \$30,000.00, or \$11,439.00, received for services as director by John Cassavetes and 61.84% of the \$60,000.00, or \$37,104.00, received for services as an actor by John Cassavetes are apportionable and allocable to New York. That none of the \$10,000.00 received by him as a writer is allocable to New York.

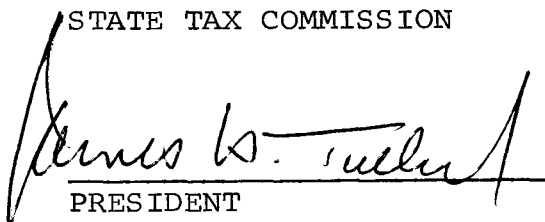
C. That the \$4,170.08 withheld from petitioner, John Cassavetes, for New York State personal income tax in 1970 by The Husbands Company, is to be considered in the computation of the tax or refund due petitioners.

D. That the penalty pursuant to section 685(b) of the Tax Law for a deficiency due to negligence is cancelled in that, pursuant to the computation herein, no deficiency exists.

E. That the petition of John Cassavetes and Gena R. Cassavetes is granted and the Notice of Deficiency issued March 26, 1973 is cancelled. The Income Tax Bureau is directed to refund the sum of \$808.84, together with such interest as may be lawfully owing.

DATED: Albany, New York
July 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER