

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BILLY C. CHRISTENSEN and
ROSAMOND G. CHRISTENSEN

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(a)~~ 22 of the
Tax Law for the Year ~~(s) XXXXXXXXXX~~
1972

AFFIDAVIT OF MAILING

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 26th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Billy C. Christensen &

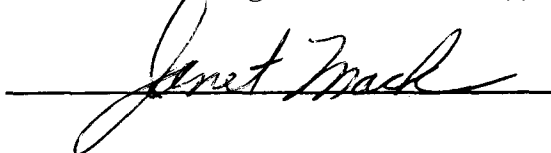
Rosamond G. Christensen ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Billy C. Christensen
34 Lone Tree Farm Road
New Canaan, Connecticut 06840

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 ~~XXXXXXXXXXXX~~
~~XXXXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this

26th day of August, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BILLY C. CHRISTENSEN and

ROSAMOND G. CHRISTENSEN

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income

Taxes under Article ~~(9)~~ 22 of the
Tax Law for the Year ~~(1971)~~ ~~XXXXXXX~~ Period ~~(s)~~
1972

AFFIDAVIT OF MAILING

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 26th day of August, 1977, she served the within

Notice of Decision by (certified) mail upon Stuart F. Forman, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Stuart F. Forman, Esq.

202 Mamaroneck Avenue

White Plains, New York 10601

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

26th day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
August 26, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Mr. & Mrs. Billy C. Christensen
34 Lone Tree Farm Road
New Canaan, Connecticut 06840

Dear Mr. & Mrs. Christensen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(x)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

PAUL B. COBURN
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

BILLY C. CHRISTENSEN and
ROSAMOND G. CHRISTENSEN

DECISION

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1972.

Petitioners, Billy C. Christensen and Rosamond G. Christensen, residing at 34 Lone Tree Farm Road, New Canaan, Connecticut 06840, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972. (File No. 11961).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 18, 1977 at 1:15 P.M. Petitioners appeared by Stuart F. Forman, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether the income arising from the exercise of a stock option by petitioners was income derived from New York sources.

II. Whether a moving allowance provided to petitioners was taxable as New York source income.

FINDING OF FACTS

1. On May 19, 1975, pursuant to information submitted, the Income Tax Bureau issued a Statement of Audit Changes to petitioners, Billy C. Christensen and Rosamond G. Christensen, imposing additional income tax for the year 1972. The Bureau also corrected the formula to be used in allocating income to New York State, and it considered the income received from the disqualifying disposition of stock as a stock option and moving and living expense reimbursement as New York State income. It accordingly corrected the allocations on these items so as to show them as ordinary income. Since petitioners had items of tax preference, they were held liable for minimum income tax. Therefore, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$4,666.69, plus interest of \$732.62, for a total of \$5,399.31.

2. In 1972 petitioner, Billy C. Christensen, was an executive with IBM. From 1963 until 1971, he was employed by IBM in France. When he returned to the United States, he purchased a home in New Canaan, Connecticut. He continued to work for IBM in their White Plain's offices. In 1972 he filed a nonresident return.

3. In 1968, IBM granted petitioner, Billy C. Christensen, qualified stock option's which he exercised in 1972. Since the stock was not held for the required three years, the sale in 1972 constituted a disqualifying disposition. For federal income tax purposes, the petitioner realized ordinary income of \$34,984.60 for the year 1972 from said stock option.

4. Petitioner, Billy C. Christensen, was reimbursed for his moving, relocation and living expenses from France to the United States in line with employer, IBM's, international assignment policy. This amounted to \$2,752.61, which was computed as income for federal income tax purposes.

5. Petitioner, Billy C. Christensen and Rosamond G. Christensen, did not contest the computation of days worked, the allocation formula of ordinary income, the modification for allowable expenses and the minimum income tax.

CONCLUSIONS OF LAW

A. That the New York adjusted gross income of a non-resident individual shall be the sum of the net amounts of items of gain, loss and deduction entered into his Federal adjusted gross income as defined in laws of the United States for the taxable year derived from or connected with New York sources.

Therefore, the income received from the disqualifying disposition of stock purchased as a stock option, and the income received from moving and living expenses reimbursement are such items of gain to be included in the adjusted gross income in accordance with the meaning and intent of section 632(a) of the Tax Law.

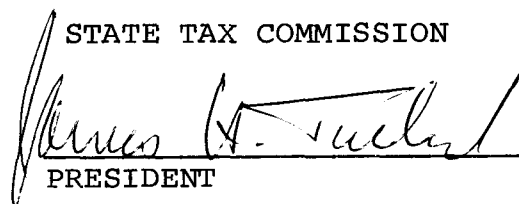
B. That since the stock option was exercised and sold in 1972 and the expense reimbursements were made in 1972, at which time petitioner, Billy C. Christensen, worked at IBM in White Plains, New York, therefore, this income was connected with New York sources in accordance with the meaning and intent of section 632(b) of the Tax Law and 20 NYCRR 131.2, 131.3 and 131.4.

C. That the petition of Billy C. Christensen and Rosamond G. Christensen is denied and the Notice of Deficiency issued May 19, 1975 is sustained.

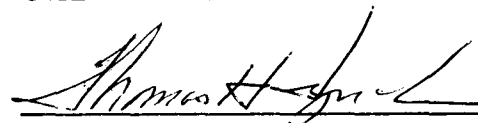
DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER