

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT M. COLLEARY and
BRIDGET B. COLLEARY

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)~~
1967, 1968, 1970 and 1971

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 21 day of June, 1977, she served the within Notice of Decision by (certified) mail upon Robert M. Colleary and Bridget B. Colleary ~~(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. Robert M. Colleary
29 Edgewood Road
Montclair, New Jersey 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)~~ ~~of the~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

21 day of June, 19 77

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ROBERT M. COLLEARY and
BRIDGET B. COLLEARY

AFFIDAVIT OF MAILING

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) ~~1967, 1968, 1970 and 1971~~ :
1967, 1968, 1970 and 1971

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 21 day of June, 1977, she served the within

Notice of Decision by (certified) mail upon Joel Mann, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Joel Mann, Esq.

Hardee Barovick Konecky & Braun
One Dag Hammarskjold Plaza
New York, New York 10017

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

21 day of June, 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

June 21, 1977

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

Mr. & Mrs. Robert Colleary
29 Edgewood Road
Montclair, New Jersey

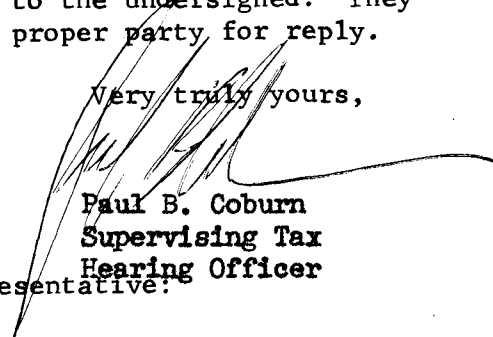
Dear Mr. & Mrs. Colleary:

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

Please take further notice that pursuant to
Section(s) **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 Petitions
of
ROBERT M. COLLEARY and
BRIDGET B. COLLEARY
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1967, 1968, 1970 and 1971.

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DECISION

Petitioners, Robert M. Colleary and Bridget B. Colleary, 29 Edgewood Road, Montclair, New Jersey, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1967, 1968, 1970 and 1971. (File No. 00512)

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 13, 1977 at 9:15 a.m. The petitioners appeared by Joel E. Mann, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of counsel).

ISSUES

I. Whether the activities of petitioner, Robert M. Colleary, performed in his New Jersey office for his New York State employer produced income allocable to New York State within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.16 for the years 1967, 1968, 1970 and 1971.

II. Whether petitioners, Robert M. Colleary and Bridget B. Colleary, had reasonable cause within the meaning and intent of section 685(a)(1) of the Tax Law for filing a late income tax return to New York State for the year 1971.

FINDINGS OF FACT

1. Petitioners, Robert M. Colleary and Bridget B. Colleary, filed a New York State nonresident income tax return for the year 1967. They listed \$43,145.11 as Federal income from wages, and \$17,258.04 as New York State wages by deducting 144 days worked outside New York State from 240 total workdays.

2. Petitioners, Robert M. Colleary and Bridget B. Colleary, filed a New York State nonresident income tax return for the year 1968. They listed \$52,089.45 as Federal income from wages, and \$17,363.15 as New York State wages by deducting 160 days worked outside New York State from 240 total workdays.

3. Petitioners, Robert M. Colleary and Bridget B. Colleary, filed a New York State nonresident income tax return for the year 1970. They listed \$70,101.32 as Federal income from wages, and \$23,367.11 as New York State wages by deducting 160 days worked outside New York State from 240 total workdays.

4. Petitioners, Robert M. Colleary and Bridget B. Colleary, filed a late New York State nonresident income tax return for the year 1971 upon the advice of their accountant. They listed \$78,000.00 as Federal income from wages and \$2,804.00 as miscellaneous Federal income. They listed \$26,000.00 as total New York State income by deducting 160 days worked outside New York State from 240 total workdays.

5. On February 22, 1971, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Robert M. Colleary, imposing additional personal income tax for the year 1967, consisting of a \$2,157.68 deficiency plus \$369.25 in interest, upon the grounds that allocation of income claimed was disallowed as unsubstantiated. Accordingly, a Notice of Deficiency was issued totalling \$2,526.97.

6. On February 22, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Robert M. Colleary and Bridget B. Colleary, imposing additional personal

income tax for the year 1968, consisting of a \$4,052.98 deficiency plus \$450.49 in interest, upon the grounds that allocation of income claimed was disallowed as unsubstantiated. Accordingly, a Notice of Deficiency was issued totalling \$4,503.47.

7. On March 25, 1974, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners, Robert M. Colleary and Bridget B. Colleary, imposing additional personal income tax for the years 1970 and 1971, consisting of a \$6,769.73 deficiency (with \$1,195.81 in interest) for 1970 and a \$7,258.50 deficiency (with \$874.00 in interest), plus a penalty of \$1,873.28, for 1971. The grounds for the aforementioned Statement of Audit Changes were that the allocation of income on the petitioners' 1970 and 1971 returns was disallowed as unsubstantiated; that the exemptions allowed on the 1971 New York State return were \$650.00 times the number of exemptions on their 1971 Federal return; that, therefore, a penalty was added to the 1971 balance due, for late filing of that return under section 685(a)(1) of the Tax Law. Accordingly, a Notice of Deficiency was issued to petitioners totalling \$18,205.92.

8. The petitioners were residents of New Jersey for all the years in issue.

9. The petitioner, Robert M. Colleary, was employed by Robert Keeshan Associates, Inc., a firm with only New York State offices, during all of the years in issue.

10. Until April of 1967, the petitioner, Robert M. Colleary, worked for his employer a couple of days a week as a supervisor in New York, New York, on the "Captain Kangaroo" television show. The rest of the time, until April of 1967, he would work at home as a writer for the same show. After April of 1967 and for the rest of the years in issue, the petitioner performed his writing tasks in an office in Montclair, New Jersey, which he rented without reimbursement from his employer. The reason he moved to an office from his home was that his family had grown too large to work at home. He was not required, by his employer, to obtain an office for his writing. No office was supplied by his employer in New York, New York.

11. No documentary or other substantial evidence was offered to show that an office could not have been provided in New York State.

CONCLUSIONS OF LAW

A. That since there is no evidence that an office could not have been set up in New York State, or that petitioner, Robert M. Colleary's services as a writer were performed in New Jersey for

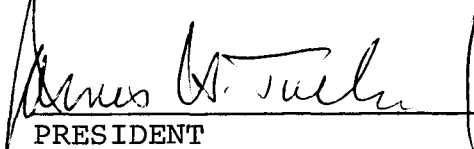
the actual necessity of his employer, as distinguished from convenience, the income attributable to these services is allocable to New York State within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.16.

B. That since the petitioners, Robert M. Colleary and Bridget B. Colleary, filed a late New York State income tax return for 1971 upon the advice of their accountant, therefore, they had reasonable cause for said late filing within the meaning and intent of section 685(a)(1) of the Tax Law; that the assessed penalty is cancelled.


C. That the petitions of Robert M. Colleary and Bridget B. Colleary are granted to the extent indicated in Conclusion of Law "B"; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued March 25, 1974; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York
June 21, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

Commerzbank A.G. NY Branch



State Tax Commission
TO: Attention Paul Greenberg

OFFICE: Income Tax Bureau

FROM: Abram J. Cuttler

DATE: March 29, 1977

SUBJECT: Commerzbank A.G. New York Branch
55 Broad Street
New York, New York 10004
I.D.# 13-2682661

The above employer has requested abatement of penalties assessed in the amount of \$7,710.40, on the delinquent returns filed for the period July 1 through November 15, 1975. Returns and payments for this period were filed on November 29, 1975.

The employer states that at the time these returns became due, they were involved in converting their manual payroll procedures to an automated payroll system. In addition, they were undergoing various internal changes which exposed those responsible for the filing of these returns to unusual pressure and work load which caused this oversight.

The employer has a very good filing record both prior and subsequent to this one period of delinquency and I believe has shown reasonable cause for his delinquent payments. I therefore recommend the penalty assessed in the amount of \$7,710.40 be abated. Tax Commission approval is required, as the amount involved exceeds \$2,500.00.

A J Cuttler

Abram J. Cuttler
Director

Agnes B. Sullivan
Milton Green
Shirley Green

AJC:td