

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD L. AND AGNES C. CARNEVALE

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 ~~(XXXXX Period(s))~~
1972

State of New York
County of Albany

John Huhn, 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 24th day of April, 1978, she served the within
Notice of Decision by (certified) mail upon Bernard L. & Agnes C.

Carnevale ~~(representative of the)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bernard L. and Agnes C. Carnevale
113 W. Kingswood Drive
Williamsburg, Virginia 23185

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)~~
~~XXXXXX~~ 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

24th day of April, 1978.

[Signature]

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

- April 24, 1978

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

Bernard L. and Agnes C. Carnevale
113 W. Kingswood Drive
Williamsburg, Virginia 23185

Dear Mr. & Mrs. Carnevale:

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(s) **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,

Joseph Chrywaty
Hearing Examiner

~~cc: Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
BERNARD L. and AGNES C. CARNEVALE : 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, Bernard L. and Agnes C. Carnevale, 113 W. Kingswood Drive, Williamsburg, Virginia 23185, 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. 11947).

On January 17, 1977, petitioners informed the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUES

I. Whether income received by petitioner Bernard L. Carnevale from New York University after his effective date of resignation constituted salary for services rendered outside New York State after said period of resignation, or whether it was compensation for past services constituting termination pay.

II. Whether the Income Tax Bureau properly allocated the salary income petitioner Bernard L. Carnevale received from New York University, in determining the income derived from New York sources for 1972.

III. Whether the Notice of Deficiency against petitioners for the year 1972 was timely issued.

FINDINGS OF FACT

1. A timely New York State nonresident income tax return was filed for 1972 by petitioners, Bernard L. and Agnes C. Carnevale. On this return, petitioner Bernard L. Carnevale allocated 100/226ths (\$11,586.70) of the \$26,186.00 that he received from New York University ("NYU") as New York State income.

2. The Income Tax Bureau issued a Notice of Deficiency on May 19, 1975 against petitioners, imposing additional personal income tax in the amount of \$729.84, plus interest. The Notice was issued on the grounds that the \$26,186.00 received by petitioner Bernard L. Carnevale from NYU consisted of (a) salary income of \$15,712.00 for the period January 1, 1972 through June 30, 1972, which was allocable to New York State sources on the basis of the ratio that 94 days worked in New York State bore to 99 total days worked and (b) termination pay of \$10,474.00, \$8,334.00 of which was allocable to New York State sources on the basis of the ratio

that the sum of his total wages allocable to New York sources for 1970, 1971 and 1972 bore to the sum of his total wages for said years. Other adjustments were also made in the aforesaid Notice which are not being contested by petitioners.

3. Petitioner Bernard L. Carnevale was the Director of Athletics at NYU from January 1, 1972 through June 30, 1972. After his resignation from NYU (which was effective July 1, 1972), petitioner assumed a similar position with the College of William and Mary in Virginia. He started working for said employer on July 1, 1972.

4. During the period January 1, 1972 through June 30, 1972, petitioner Bernard L. Carnevale was living in New Jersey and none of the work performed in this period was done on an "at home" basis. Of those days worked for NYU during this period, five days were found to have been worked outside New York State.

5. During the period July 1, 1972 to November 1, 1972, petitioner received monthly payments from NYU totaling \$10,474.00. These payments were made in accordance with a resignation agreement made between Bernard L. Carnevale and the Division of Athletics at NYU. Said agreement referred to the post-resignation payments as "retirement payments and other benefits".

6. Petitioner Bernard L. Carnevale contended that the income of \$10,474.00 which he received under the resignation agreement was actually compensation for substantial and meaningful services performed by him for NYU during the period July 1, 1972 through November 1, 1972 and which had been agreed to prior to his decision to resign. He also claimed that although he usually spent the month of August on vacation, he spent August and September of 1972 in Munich, Germany, for the purpose of serving as a representative of the International Basketball Board at the 1972 Summer Olympics. This was done because of a commitment made while he was Athletic Director at NYU. Therefore, he argued that the income of \$10,474.00 which he received from NYU for the period July 1, 1972 through November 1, 1972 was compensation for services performed entirely outside New York State and was not taxable for New York State income tax purposes, since he was not a resident of New York State. He further argued that the income he received from NYU for the period January 1, 1972 through November 1, 1972 was properly allocable to New York State on the basis of the ratio that 100 days bore to 226 days.

7. The Income Tax Bureau stated that the payments petitioner Bernard L. Carnevale received from NYU after July 1, 1972 were termination benefits and as such were allocable to New York State sources in accordance with the provisions of section 632(c) of

the Tax Law and 20 NYCRR 131.18. It also stated that petitioners' income, attributable to New York State sources for the period January 1, 1972 through June 30, 1972, was determinable in accordance with the provisions of 20 NYCRR 131.16.

8. Petitioners contended that the Income Tax Bureau was barred from assessing or collecting any tax deemed to be due for the year 1972, since the Notice of Deficiency issued against them on May 19, 1975 for the year 1972 was not timely issued within the statutory period of limitations.

CONCLUSIONS OF LAW

A. That the income received by petitioner Bernard L. Carnevale from NYU after June 30, 1972 was not compensation for the performance of services for NYU, but rather represented retirement payments and other benefits as set forth in his resignation agreement; therefore, said income was termination pay and was properly allocated by the Income Tax Bureau in accordance with section 632(c) of the Tax Law and 20 NYCRR 131.18.

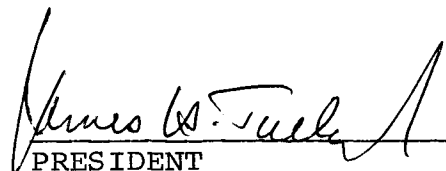
B. That the Income Tax Bureau properly allocated wages which petitioner Bernard L. Carnevale received from NYU, in accordance with the provisions of 20 NYCRR 131.16, using as a basis for said allocation the period January 1, 1972 through June 30, 1972, the effective date of his resignation.

C. That the Notice of Deficiency issued against petitioners on May 19, 1975 for the year 1972 was issued within three years of the date that petitioners' 1972 New York State income tax non-resident return was required to be filed. Therefore, the Notice of Deficiency was timely issued and any tax determined to be due by the Tax Commission could be assessed and collected in accordance with the meaning and intent of sections 683(a) and (e) of the Tax Law.

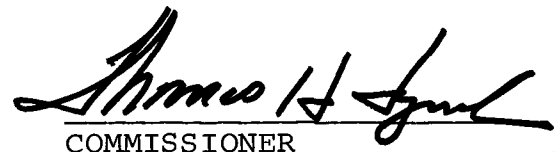
D. That the petition of Bernard L. and Agnes C. Carnevale is denied and the Notice of Deficiency issued May 19, 1975 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER