

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANKLIN P. CLAYTON, JR.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of **Personal Income**
Taxes under Article ~~23~~ 22 of the
Tax Law for the Year(s) ~~xxxxxx~~
1972 and 1973.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20 day of September, 1978, he served the within
notice of decision by (certified) mail upon Franklin P. Clayton, Jr.

~~xxxxxx~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Franklin P. Clayton, Jr.
144 Dodd Street
East Orange, New Jersey 07017

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

Sworn to before me this

20 day of September, 1978







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

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

September 20, 1978

**Franklin P. Clayton, Jr.
144 Dodd Street
East Orange, New Jersey 07017**

Dear Mr. Clayton:

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 **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 CHYRYWATY
HEARING EXAMINER**

~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

FRANKLIN P. CLAYTON, JR. :

DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under :
Article 22 of the Tax Law for the :
Years 1972 and 1973. :

Petitioner, Franklin P. Clayton, Jr., 144 Dodd Street, East Orange, New Jersey 07017, 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 1972 and 1973 (File No. 11722).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 20, 1977 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether petitioner's salary income derived from Federal Government employment at a building owned by the Federal government and located in New York State was subject to New York State personal income tax.

II. Whether the imposition of New York State personal income tax on petitioner was in violation of the United States Constitution.

FINDINGS OF FACT

1. Petitioner, Franklin P. Clayton, Jr., timely filed New York State personal income non-resident tax returns for 1972 and 1973. He did not include wage income as New York source income for said years and requested a refund of all New York State taxes withheld from his wages.

2. The Income Tax Bureau contended that the wage income was derived from services performed within New York State and was, therefore, subject to New York State personal income tax. It issued a Statement of Refund Adjustment for each of said years in which it accordingly recomputed petitioner's tax returns and reduced the amounts of the refunds claimed. The reduced refunds were issued to petitioner on February 5, 1974 for 1972 and October 30, 1974 for 1973. Petitioner's subsequent claim for refund was denied by the Income Tax Bureau on December 23, 1974.

3. Petitioner was employed by the United States Customs Service and worked in a Federal building in New York State during the years at issue. He did not perform any services outside the boundaries of New York State.

4. Petitioner contended that as a nonresident working for the Federal Government on Federal property, his wages were not subject to New York State personal income tax and that the taxation by New York State of said income was in violation of the United States Constitution.

CONCLUSIONS OF LAW

A. That petitioner, Franklin P. Clayton, Jr., performed services within New York State and the wage income derived therefrom was subject to New York State

personal income tax in accordance with the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.4(b).

B. That the constitutionality of the laws of the State of New York are presumed at the administrative level of and by the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that section 632 of the Tax Law is constitutional to the extent that it relates to the imposition of a personal income tax liability on the petitioner.

C. That the petition of Franklin P. Clayton, Jr. is denied and the Notice of Refund Disallowance issued December 23, 1974 in the amount of \$216.75 for 1972 and \$264.04 for 1973 is sustained.

DATED: Albany, New York
September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER