

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Mason & Margot Adams :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1972. :

State of New York

County of Albany

Jay Vredenburg, 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 19th day of October, 1979, he served the within notice of Decision by certified mail upon Mason & Margot Adams, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mason & Margot Adams

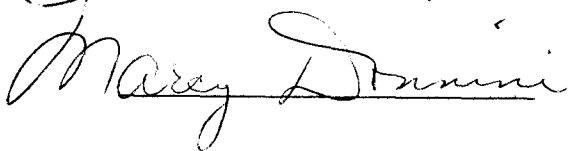
49 Owenoke Park

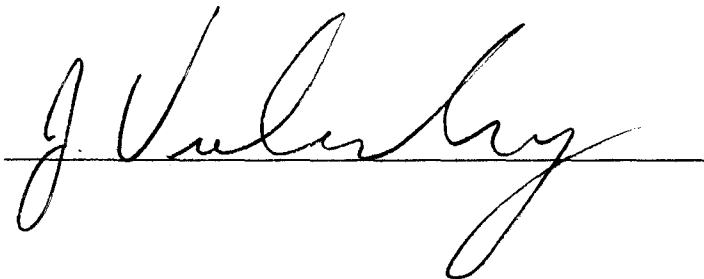
Westport, CT 06880

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

Sworn to before me this
19th day of October, 1979.


Mary D. Danini


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Mason & Margot Adams :

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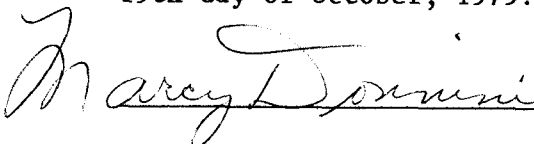
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Alvin Goldfine the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

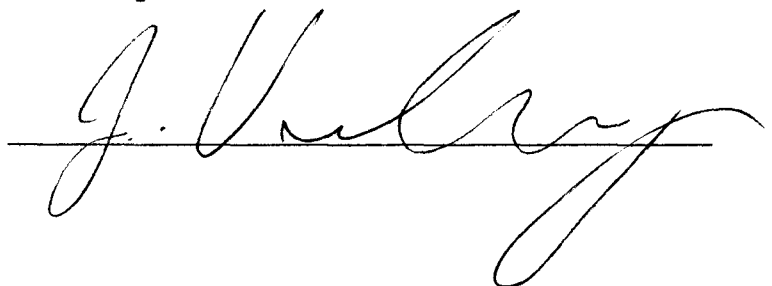
Mr. Alvin Goldfine
Charles H. Renthal & Co.
641 Lexington Ave.
New York, NY 10022

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
19th day of October, 1979.


Mary Dominici



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

October 19, 1979

Mason & Margot Adams
49 Owenoke Park
Westport, CT 06880

Dear Mr. & Mrs. Adams:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Alvin Goldfine
Charles H. Renthal & Co.
641 Lexington Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MASON ADAMS and MARGOT ADAMS : 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, Mason and Margot Adams, 49 Owenoke Park, Westport, Connecticut 06880, 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. 15165).

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 May 16, 1978 at 10:45 A.M. Petitioners appeared by Alvin Goldfine, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Jean Ellen Purcell, Esq. and Lawrence Stevens, Esq., of counsel).

ISSUES

I. Whether monies received by Mason Adams, a nonresident, were income derived from or connected with New York sources.

II. Whether petitioners are entitled to apportion and allocate items of income attributable to a profession or occupation carried on partly within and partly without this State, if the monies received constitute New York source income.

III. Whether petitioners are able to exclude income from New York as provided by section 632(b)(2-a) of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Mason and Margot Adams, filed a New York State Income Tax Nonresident Return for 1972, in which they claimed an apportionment and allocation of professional income earned partly within and partly without New York State.

2. On March 29, 1976, the Income Tax Bureau issued a Notice of Deficiency for 1972 in the amount of \$7,885.01, on the grounds that petitioners were not entitled to apportion and allocate their income between income earned within and without the State.

3. Mason Adams is a nonresident who in 1972 earned his income as an actor and announcer in commercials. He performed the voice parts for commercials and voice overs, and occasionally appeared on camera. Petitioner admits that most of these services were rendered in New York State.

4. Mr. Adams received compensation for the personal services which he rendered in recording these commercials under two different labels. Some compensation was received for the actual recording, while other funds received were labeled "residuals." No documentation was proffered regarding the computation or basis of these residuals. In 1972 Mr. Adams' total compensation was \$112,927.00.

5. Petitioners allege that some of the commercials which were played may have been broadcast over closed-circuit or cable television.

CONCLUSIONS OF LAW

A. That no distinction can be made between payments made to petitioner Mason Adams for recording fees and for residuals absent credible evidence establishing that there is a difference that requires different income tax treatment. The combined payments are payments for personal services rendered by Mason Adams.

B. That petitioners must include all income derived from or connected with New York sources, pursuant to section 632(a)(1) of the Tax Law; therefore, all funds received for commercials made in New York must be included as income received for personal services rendered by Mr. Adams.

C. That petitioners may not apportion and allocate their income in that no credible evidence was submitted to establish that Mason Adams carried on a profession partly within and partly without New York State.

D. That for the tax year here involved, petitioners do not qualify for the limited exclusion provided by section 632(b)(2-a) of the Tax Law in that paragraph (2-a) is applicable to tax years beginning after December 31, 1974.

E. That the petition of Mason Adams and Margot Adams is denied and the Notice of Deficiency issued to petitioners on March 29, 1976 is sustained.


DATED: Albany, New York

OCT 19 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER