

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Daniel D. Kinley :
Margery R. Kinley : 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 1970. :

State of New York
County of Albany

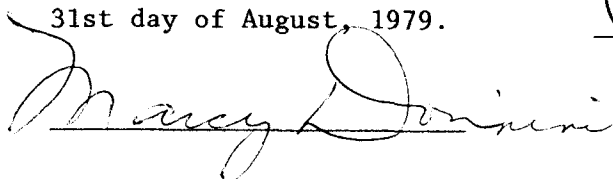
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Daniel D. Kinley, Margery R. Kinley, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

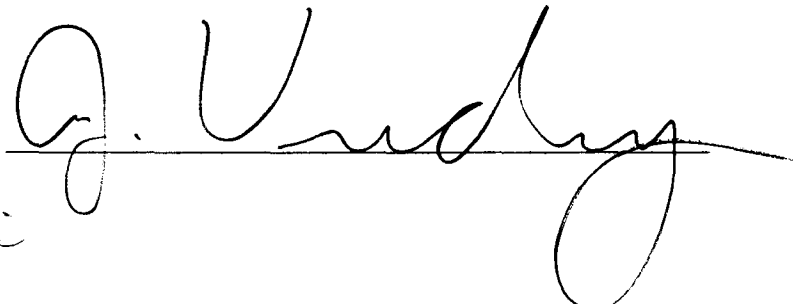
Daniel D. Kinley
Margery R. Kinley
269 Round Hill Rd.
Greenwich, CT 06830

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
31st day of August, 1979.


Nancy Dominici


Jay Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

Daniel D. Kinley
Margery R. Kinley
269 Round Hill Rd.
Greenwich, CT 06830

Dear Mr. & Mrs. Kinley:

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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

DANIEL D. KINLEY and MARGERY R. KINLEY : DECISION

for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1970.

Petitioners, Daniel D. and Margery R. Kinley, Round Hill Road, Greenwich, Connecticut 06830, 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 1970 (File No. 13709).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 21, 1978 at 1:15 P.M. Petitioner Daniel D. Kinley appeared pro se and for his wife, petitioner Margery R. Kinley. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether petitioner Daniel D. Kinley properly allocated his income based on days worked within and without New York State during 1970.

FINDINGS OF FACT

1. Petitioners, Daniel D. and Margery R. Kinley, filed a joint New York State Income Tax Nonresident Return for 1970, on which they allocated total wage income of \$85,486.66, based on days worked within and without New York State.

2. On audit, the Income Tax Bureau issued a Notice of Deficiency dated April 12, 1974, along with an explanatory Statement of Audit Changes, which indicated that the wages of \$85,486.66 were being allocated under two different allocation methods, as follows:

(a) Wages of \$46,025.16 which were paid by Interpublic Group of Companies, Inc. were allocated, based on an average allocation ratio determined by the amount of wages reported to New York State during 1965, 1966, 1967, 1968 and 1969, over the total amount of wages earned during these years.

(b) Wages of \$39,461.50 which were paid by Parade Publications, Inc. were allocated, based on days worked within and without New York State during the period May 1, 1970 through December 31, 1970.

3. In 1965 petitioner Daniel D. Kinley, a resident of Connecticut, became employed under a written employment contract by the Interpublic Group of Companies, Inc. ("Interpublic"), a Delaware corporation with offices in New York State.

4. Petitioner's duties for Interpublic during 1965, 1966, 1967, 1968 and 1969 were performed both within and without New York State.

5. On July 31, 1969, Interpublic notified petitioner Daniel D. Kinley that his services would be terminated on July 31, 1970. In accordance with the contractual agreement, said petitioner was entitled to receive his notice of termination twelve months prior to the date of said termination, and to continue receiving his salary during that twelve-month period. In addition, he was required to perform his duties until the termination date (July 31, 1970).

6. Petitioner Daniel D. Kinley contended that from September of 1969 to May 1, 1970, he did not render services, and that he was not required to report to Interpublic. However, he stated that during this period he was required to make himself available, or be "on call" to Interpublic, and that he did so from his home in Connecticut.

7. Parade Publications, Inc. ("Parade") offered petitioner Daniel D. Kinley a position commencing May 1, 1970. In order to accept this position, Mr. Kinley agreed with Interpublic that his employment by Interpublic be terminated as of April 30, 1970. This agreement relieved Interpublic from its obligation to pay Mr. Kinley his salary beyond that date.

8. On May 1, 1970, petitioner Daniel D. Kinley began his employment with Parade. He was required to perform his duties within and without New York State.

9. Petitioner Daniel D. Kinley's primary contention was that his total salary from Interpublic and Parade should be allocated based on days worked within and without New York State, and that the days spent at his home in Connecticut during the period January 1, 1970 through April 20, 1970 be considered days worked outside New York State. He also argued, in the alternative, that the payments constituted an annuity under 20 NYCRR 131.4(d) and, thus, were not taxable to him as a nonresident.

CONCLUSIONS OF LAW

A. That the terminal leave salary received by petitioner Daniel D. Kinley during 1970 from Interpublic, resulted from a continuing contractual obligation, and did not constitute an annuity as defined in 20 NYCRR 131.4(d); rather, it constituted a form of deferred compensation attributable to past contractual services performed within and without New York State. Such compensation must be allocated as described in Finding of Fact 2(a) of this decision, in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.18.

B. That the salary received by petitioner Daniel D. Kinley from Parade Publications, Inc. must be separately allocated based on days worked within and without New York State during the period May 1, 1970 through December 31, 1970, under section 632(c) of the Tax Law and 20 NYCRR 131.16.

C. That the petition of Daniel D. and Margery R. Kinley is denied and the Notice of Deficiency issued April 12, 1974 is sustained, together with such additional interest as may be lawfully owing.

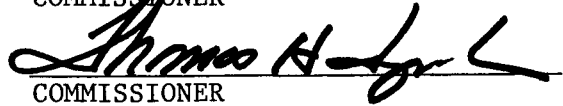
DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARNOLD R. KLINE

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) :
1971 - 1975

State of New York
County of Albany

~~John H. H.~~ Jay Vredenburg

, 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 8th day of August, 1979, she served the within

Default Order by (certified) mail upon Arnold R. Kline

~~(representative of)~~ the petitioner in the within proceeding,

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

as follows: Arnold R. Kline
143-11 29th Road
Flushing, New York 11354

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)~~
~~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

8th day of August, 1979.

Mary L. Lonnini

Jay Vredenburg



STATE OF NEW YORK
DEPARTMENT OF
TAXATION AND FINANCE
ALBANY, NEW YORK 12227

BERTHLYNN J. DAVIS

SECRETARY TO THE
STATE TAX COMMISSION

August 8, 1979

Arnold S. Fine
143-11 29th Road
Flushing, New York 11356

Dear Mr. Kline:

Please take notice of the Default Order of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 502 of the Tax Law, any proceeding in court to review an adverse decision must be commenced within four 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,

BERTHLYNN J. DAVIS
SECRETARY TO THE STATE TAX COMMISSION

Enc.

cc: Petitioner's Representative;

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARNOLD R. KLINE

DEFAULT ORDER

for Redetermination of Deficiency or for Refund of

Personal Income Taxes under Article(s) 22 of the

Tax Law for the year 1971 through 1975

Petitioner(s) Arnold R. Kline, 143-11 29th Road, Flushing, New York 11354

filed a petition for redetermination of

deficiency or for refund of Personal Income Taxes taxes under

Article(s) 22 of the Tax Law for the year 1971 thru 1975 File No. 18251

Under Section 601.5 of the State Tax Commission Rules of Practice and Procedure, the taxpayer ~~taxpayer's representative~~ was served notice to file a perfected petition. The taxpayer ~~taxpayer's representative~~ failed to file a perfected petition. Notice to file a perfected petition was sent to the taxpayer-~~taxpayer's representative's~~ last known address.

Now on motion of the attorney for the Department of Taxation and Finance, it is

ORDERED that the petition of Arnold R. Kline
be and the same is hereby denied.

DATED: Albany, New York
August 8, 1979

STATE TAX COMMISSION

James W. Tully
PRESIDENT

Thomas H. G. [Signature]
COMMISSIONER

COMMISSIONER

November 30, 1979

Arnold R. Kline
39-15 150 Place
P. O. Box 5465
Flushing, New York 11354

RE: Arnold R. Kline
TAB No. 18251

Dear Mr. Kline:

This is to acknowledge receipt of your letter of November 21, 1979 with reference to the above entitled matter.

Your motion to vacate the default order issued August 8, 1979 for failure to file a perfected petition is granted upon condition that you file a perfected petition within 45 days from the date of this letter.

Perfected Petition forms are enclosed for your convenience.

We are also enclosing herewith a copy of the Rules of Practice and Procedure of the State Tax Commission and a copy of Article 22 of the Tax Law.

If you wish any additional information, please contact the Tax Appeals Bureau, Building #9, State Campus, Albany, New York, 518-457-1723.

Arnold R. Kline

November 30, 1979

I have requested the Tax Appeals Bureau to note the change in address.

Very truly yours,

PAUL B. COBURN
Secretary to the State Tax
Commission

PBC:mac

Enc.

cc: Tax Appeals Bureau
Attn: John Sollecito, Director

Arnold R. Kline
39-15 150 Place
P. O. Box 5465
Flushing, New York 11354

November 21, 1979

Berthlynn J. Davis
Secretary to the State Tax Commission
State of New York
Department of Taxation and Finance
Albany, New York 12227

Re: Arnold R. Kline
39-15 150 Place
Flushing, New York 11354
Default Order of State Tax Commission

Dear Mr. Davis:

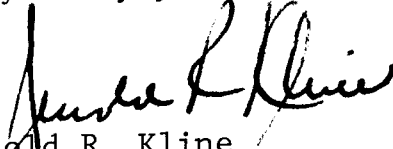
Please furnish me with information relative to this Default Order
(copy attached for your handy reference).

I do not understand these papers and want the file against this
Default Order within the four months.

I need a copy of my entire file - File # 18251, a copy of Section 601.5
of the State Tax Commission Rules of Practice and Procedure, a copy
of Article 22 of the State Tax Law for the year 1971 thru 1975 and
a copy of section 690 of the State Tax Law and any other copies of
pertinent data relative to this matter.

In addition, I respectfully request an extension of time of one month
from the date of receiving the above information, in order to file
in court relative to the Default Order. Please note my address
change.

Very truly yours,


Arnold R. Kline

Enclosure

ARK:cgp

Certified Mail #245366
Return Receipt Requested

