

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

October 9, 1979

Ole G. & Yvonne V. Morby
15 Sturges Common
Westport, CT 06880

Dear Mr. & Mrs. Morby:

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

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
OLE G. MORBY and YVONNE V. MORBY
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1971.

DECISION

Petitioners, Ole G. Morby and Yvonne V. Morby, 15 Sturges Common, 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 1971 (File No. 13813).

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 24, 1978 at 10:45 A.M. Petitioner Ole G. Morby appeared pro se and for his wife, petitioner Yvonne V. Morby. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioners properly allocated Ole G. Morby's income, based on days worked within and without New York State.

FINDINGS OF FACT

1. Petitioners, Ole G. and Yvonne V. Morby, filed a New York State income tax nonresident return for 1971. On it, salary income of \$22,615.83 was allocated, based on the number of days worked within and without New York State. Petitioners were residents of Connecticut during 1971.

2. On March 25, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner for \$861.05, plus \$100.43 in interest, for a total of \$961.48. This was done on the grounds that petitioners' allocation of income

earned by Ole G. Morby was incorrect. The Bureau contends that certain days on which Mr. Morby worked at his home in Connecticut were considered as nonworking days, rather than as days worked outside New York State.

3. In 1957 petitioner Ole G. Morby became employed by Time, Inc. as operations manager of its Broadcast Division, which consisted of approximately thirteen broadcasting stations. Sometime in 1970, Time, Inc. decided to sell the stations and, subsequently, it entered into negotiations with prospective buyers.

4. Petitioner Ole G. Morby continued his normal duties as operations manager until August 30, 1971, when he entered into an oral agreement with Time, Inc. to render consulting services with respect to Time's remaining broadcasting stations, until December 31, 1971. As of August 30, 1971, Mr. Morby was not required to report or perform services in New York, but was required to make himself available to render consulting services from his home in Connecticut. He was paid approximately fifty percent of his normal salary while making himself available for such consultation.

5. Petitioner Ole G. Morby rendered all his consulting services by telephone and by correspondence from his home in Connecticut during the period August 30, 1971 through December 31, 1971. For these services, he received eight semi-monthly payments of \$538.48, totalling \$4,307.84. In addition, he earned \$35.58 in taxable income during this period consisting of excess insurance premiums paid by Time, Inc.

6. Petitioner Ole G. Morby did not maintain an office, use office facilities, or render services in New York State during the period August 30, 1971 through December 31, 1971.

7. No information was submitted to indicate that petitioner Ole G. Morby performed services outside New York State during the period January 1, 1971 to

August 30, 1971, when he earned \$18,307.99 as the operations manager of Time, Inc. In addition, he earned \$71.12 during this period in taxable income in excess insurance premiums paid by Time, Inc., and incurred \$1,598.00 in employee business expenses.

CONCLUSIONS OF LAW

A. That petitioner Ole G. Morby received the amount of \$4,307.84 and \$35.58 as compensation for personal services rendered wholly without New York State; accordingly, such compensation is not includable in his New York adjusted gross income under section 632 of the Tax Law and 20 NYCRR 131.4(b) (Hayes v. State Tax Commission, 61 A.D.2d 62, 401 NYS2d 876).

B. That petitioner Ole G. Morby received compensation of \$18,307.99 and \$71.12, for personal services rendered wholly within New York State; accordingly, such compensation is included, in full, in his New York adjusted gross income under section 632 of the Tax Law.

C. That the petition of Ole G. and Yvonne V. Morby is granted to the extent that the amounts of \$4,307.84 and \$35.58 in compensation for personal services rendered wholly without New York State are not includable in New York adjusted gross income. The New York adjusted gross income shall be determined in accordance with the figures contained in Finding of Fact "7" of this decision.

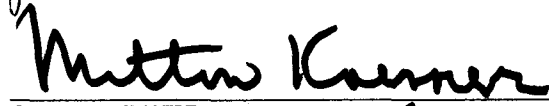
D. That the Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued March 25, 1974 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER