

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

John W. & Maureen B. Noaks :

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 1973. :

State of New York

County of Albany

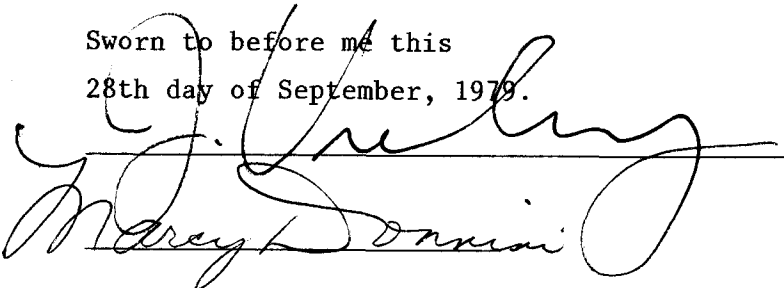
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon John W. & Maureen B. Noaks, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John W. & Maureen B. Noaks  
La Toree de Llinas  
Mallorca, Spain

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  
28th day of September, 1979.



A handwritten signature in cursive script, likely belonging to a notary public, is written over a horizontal line. The signature is highly stylized and difficult to decipher, but it appears to contain the name 'Nancy Donnici'.

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

John W. & Maureen B. Noaks  
La Toree de Llinas  
Pollensa  
Mallorca, Spain

Dear Mr. & Mrs. Noaks:

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,



cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JOHN W. NOAKS and MAUREEN B. NOAKS : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1973. :

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Petitioners, John W. Noaks and Maureen B. Noaks, La Torre de Llinas, Pollensa, Mallorca, Spain, 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 1973 (File No. 15105).

On December 12, 1978, petitioners advised 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 petitioners were New York State residents during 1973.
- II. Whether income taxes withheld by a foreign government and allowed as a foreign tax credit against petitioners' Federal tax should be allowed as a subtraction in arriving at total New York income.
- III. Whether petitioners were entitled to deduct alimony payments in excess of the amount claimed on their Federal tax return.
- IV. Whether expenses claimed in connection with the operation of petitioner John W. Noak's business in Brussels, Belgium, were deductible for New York State income tax purposes, when said expenses were not included as a deduction on his Federal income tax return.

FINDINGS OF FACT

1. Petitioners, John W. Noaks and Maureen B. Noaks, timely filed a joint New York State Income Tax Resident Return for 1973, on which they indicated that their period of New York residence was January 1, 1973 to June 15, 1973, and that their residence for the balance of the year was Brussels, Belgium.

2. On March 13, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, on which it proposed an increase in tax based on the following:

- (a) Petitioners were considered to be residents of New York for the entire tax year and were subject to tax on income received from all sources, including income earned abroad, to the extent that it was included in their total Federal adjusted gross income.
- (b) Moving expenses claimed were disallowed on the grounds that petitioner John W. Noaks did not meet the full-time work requirements of a self-employed individual. (Petitioners had deducted fifty percent of the moving expenses which had been claimed on their Federal tax return.)
- (c) Petitioners failed to add to Federal adjusted gross income, twenty percent of the amount by which net long-term capital gains exceeded net short-term capital losses.
- (d) The State income tax refund included in Federal adjusted gross income was required to be subtracted in arriving at New York adjusted gross income.

Accordingly, on September 29, 1975, the Bureau issued a Notice of Deficiency for \$2,275.85 in personal income tax, plus \$190.60 in interest, less an overpayment on petitioners' return of \$532.14, for a net balance due of \$1,934.31.

3. On May 14, 1976, petitioners filed an amended return, on which they elected to file separately and on which they did not deduct moving expenses. Petitioner Maureen B. Noaks deducted foreign income which she received after June 15, 1973, on the grounds that she was a citizen and domiciliary of the United Kingdom after said date. Petitioners also deducted foreign income tax withheld by foreign governments as a foreign tax credit against their Federal tax liability. They contended that since they could have claimed said taxes as an itemized deduction on their Federal tax return, they should be allowed as an itemized deduction on their New York tax return. However, the amount of foreign income tax was included in the amount of foreign income which petitioners deducted in arriving at New York adjusted gross income. Petitioners also claimed additional alimony payments of \$3,600.00, which amount was based on a separation agreement and which amount was not included in their Federal income tax return.

4. On May 24, 1976, the Income Tax Bureau notified petitioners that the Notice of Deficiency issued on September 29, 1975 was reduced by \$988.27, based on their election to file separate New York State tax returns. The Bureau did not allow any of the deductions claimed on the amended return as stated in Finding of Fact "3".

5. On June 8, 1976, petitioners filed a petition for redetermination of a deficiency, in which they claimed that deductions of \$6,354.00 taken on their amended return and which they claimed were incurred in connection with the operation of a business in Brussels, Belgium, were valid business deductions and should be allowed for New York tax purposes, although said expenses were not claimed for Federal tax purposes. Petitioner John Noaks did not submit any documentary evidence to show that he had operated as a self-employed individual during 1973.

6. Along with their joint Federal income tax return, petitioners filed a "Statement in Support of Credit Claimed for Taxes Paid to Foreign Countries", in which petitioner Maureen B. Noaks reported dividend income of \$19,650.00 and interest income of \$4,180.00, for a total foreign income of \$23,830.00 from which the foreign governments withheld the sum of \$3,528.00.

7. Petitioner Maureen B. Noaks did submit evidence to show that she was a nonresident alien during the period of time that she lived in the United States.

8. Petitioners substantiated an additional \$3,600.00 in alimony payments which were not previously deducted on their Federal tax return.

#### CONCLUSIONS OF LAW

A. That petitioner Maureen B. Noaks, although a citizen of the United Kingdom, was a resident alien for both Federal and New York State income tax purposes and that as such, is taxed the same as a United States citizen on income received from all sources while a New York State resident.

B. That petitioners were domiciliaries of New York State and spent more than thirty days in New York State during 1973, did not have a permanent place of abode outside New York State for the entire year, and did have a permanent place of abode in New York State for part of said year; as such, they were resident individuals within the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.

C. That the New York adjusted gross income of a resident individual means his Federal adjusted gross income, as defined in the laws of the United States for the taxable year, with the modifications specified in sections 612(b) and (c) of the Tax Law. Since the modifications set forth in section 612(b) are modifications increasing Federal adjusted gross income and since there is no modification within section 612(c) of the Tax Law to reduce Federal

adjusted gross income by the amount of income earned from foreign sources, or by the amount of foreign income taxes withheld, all income earned during 1973 was subject to New York State personal income tax. Moreover, foreign income taxes may not be taken as a New York itemized deduction, since section 615(c)(1) of the Tax Law requires that the total amount of deductions from Federal adjusted gross income is to be reduced by the Federal deductions for income taxes imposed by this State or any other taxing jurisdiction.

D. That petitioners substantiated alimony payments in excess of the amount claimed on their Federal income tax return; as a result, they are entitled to a larger deduction.

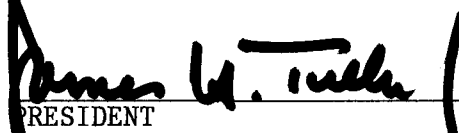
E. That petitioners failed to submit documentary or other satisfactory evidence to support the business expenses claimed in their petition; as a result, they have not sustained the burden of proof imposed by section 689(e) of the Tax Law. Petitioners also failed to show that these expenses were ordinary and necessary in accordance with section 162(a) of the Internal Revenue Code.

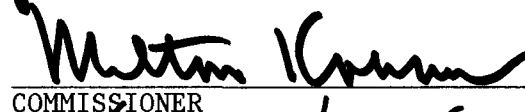
F. That the petition of John W. Noaks and Maureen B. Noaks is granted to the extent indicated in Conclusion of Law "D"; that the Income Tax Bureau is hereby directed to recompute the Notice of Deficiency issued on September 29, 1975 and modified May 24, 1976; and that, except as so granted, the petition is in all other respects denied.

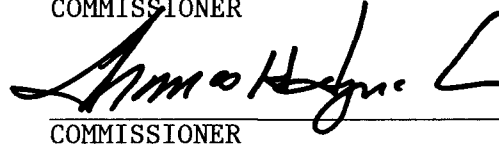
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
RESIDENT

  
COMMISSIONER

  
COMMISSIONER