

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Peter S. & Anne L. Prescott :

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 Years 1971 & 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 28th day of September, 1979, he served the within notice of Decision by certified mail upon Peter S. & Anne L. Prescott, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter S. & Anne L. Prescott

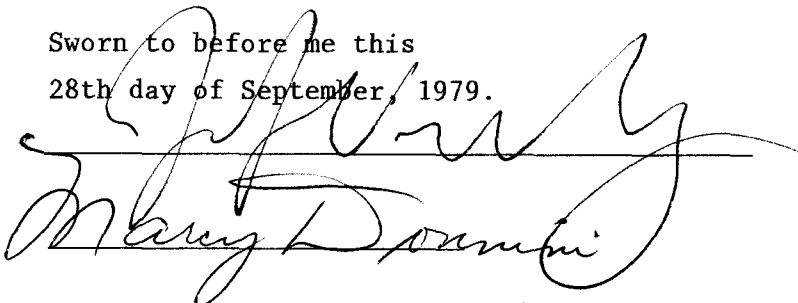
81 Benedict Hill Rd.

New Canaan, CT 06840

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.



Mary L. Damiani

STATE OF NEW YORK  
STATE TAX COMMISSION

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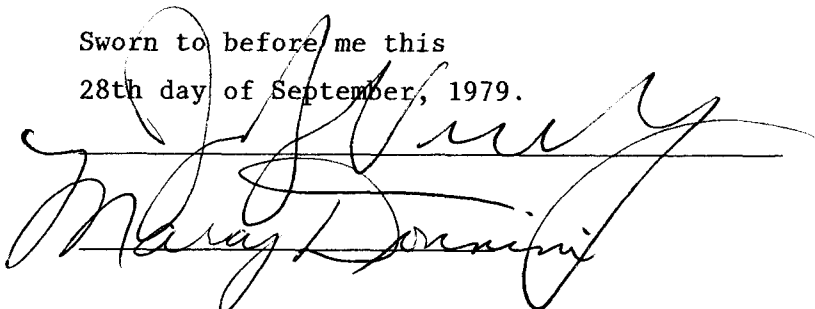
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Aaron Kozak the representative of the petitioner in the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

Mr. Aaron Kozak  
Kozak, Schwartz & Co.  
30 E. 42nd St.  
New York, NY 10017

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  
28th day of September, 1979.



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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Peter S. & Anne L. Prescott  
81 Benedict Hill Rd.  
New Canaan, CT 06840

Dear Mr. & Mrs. Prescott:

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  
Aaron Kozak  
Kozak, Schwartz & Co.  
30 E. 42nd St.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
PETER S. PRESCOTT	:	
and	:	
ANNE L. PRESCOTT	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1971 and 1972.	:	

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Petitioners, Peter S. Prescott and Anne L. Prescott, 81 Benedict Hill Road, New Canaan, Connecticut 06840, 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 1971 and 1972 (File No. 14607).

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 July 6, 1977 at 9:15 A.M. Petitioners appeared by Aaron Kozak, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner Peter S. Prescott properly allocated his income based on days worked within and without New York State.

FINDINGS OF FACT

1. Petitioners, Peter S. Prescott and Anne L. Prescott, filed New York State income tax nonresident returns for 1971 and

1972, whereon they allocated their respective salary income, based on the number of days worked within and without New York State.

2. On audit, the Income Tax Bureau issued two notices of deficiency dated February 24, 1976, whereby the salary income of both petitioners was held fully taxable, on the grounds that days worked at their home in Connecticut did not constitute a proper basis for allocating income.

3. Petitioners conceded that the reported salary income of petitioner Anne L. Prescott in the amount of \$11,350.00 for 1971 and \$12,324.98 for 1972 was fully taxable to New York State, without the application of an allocation formula.

4. Petitioner Peter S. Prescott (a writer) was retained by Newsweek, Inc. as a book critic. Newsweek, Inc. is a New York corporation with offices at 444 Madison Avenue, New York, New York.

5. Newsweek, Inc. issued "Withholding Tax Statements" which indicated that wages were paid to Peter S. Prescott in the sum of \$24,916.26 for 1971 and \$26,435.27 for 1972.

6. Newsweek, Inc. did not provide Mr. Prescott with office facilities or secretarial services. They did not require petitioner to report to or perform services at their offices in New York City.

7. Petitioner Peter S. Prescott maintained an office and a library at his home in New Canaan, Connecticut. Petitioner's home library contained a very large number of books and research materials which were utilized in his activities as a book critic, author, lecturer, and contributor of major articles to various newspapers and magazines.

8. The income derived from petitioner's activities as an author, lecturer, and article contributor were reported as business income from a sole proprietorship conducting business in Connecticut. This business income was not reported as taxable income for New York State tax purposes and as such, is not at issue.

9. During 1971 and 1972, petitioner Peter S. Prescott spent time in New York for business appointments, research, discussions and lunches with his editors at Newsweek, Inc., and for visiting libraries and attending lectures; however, he contended that he did not consider this to be time worked on behalf of Newsweek, Inc. At the hearing, petitioner testified that Newsweek, Inc. had a book department in New York where he could and did go from time to time to "chat" with his two assistants.

10. Although petitioner came into New York for the above-mentioned purposes, he contended that all his activities as a book critic were performed at his home in Connecticut. The acts of choosing a book, reading it, and then writing the article about it for Newsweek, Inc. were performed at petitioner's discretion within the privacy of his home.

11. Mr. Prescott contended that the preparer of his tax returns, a public accountant certified in the State of Connecticut, erroneously allocated his wife's salary based on days worked within and without New York State. Said accountant also erroneously allocated Peter Prescott's income by assuming that the days spent in New York were for the performance of services as a book critic.

CONCLUSIONS OF LAW

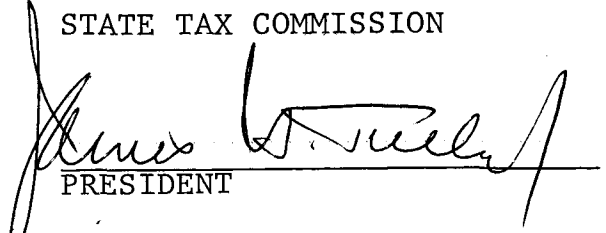
A. That petitioner Peter S. Prescott performed services for his employer Newsweek, Inc. within New York State during 1971 and 1972; that the days Peter S. Prescott worked at his home in Connecticut for Newsweek, Inc. during the years at issue were worked there by reason of his own convenience, and not for the convenience and necessity of Newsweek, Inc.

B. That the salary paid to Peter S. Prescott by Newsweek, Inc. during the years at issue is income from New York sources, within the meaning and intent of section 632(b) of the Tax Law; therefore, it is not subject to allocation to sources within and without the State.

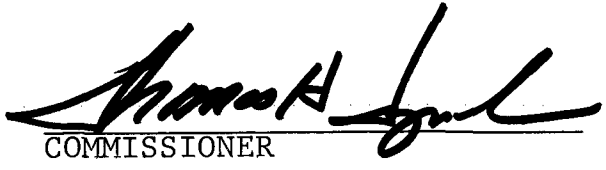
C. That the petition of Peter S. Prescott and Anne L. Prescott is denied and the notices of deficiency issued February 24, 1976 are sustained.

DATED: Albany, New York  
SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER