

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Albert M. & Katherine E. Battis :

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 1974, 1975. :

AFFIDAVIT OF MAILING

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Albert M. & Katherine E. Battis, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Albert M. & Katherine E. Battis
Regency Park Towers, C-806
Willow Grove, PA 19090

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
18th day of July, 1980.

Dorothy A. Bank

J. Vredenburg

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

July 18, 1980

Albert M. & Katherine E. Battis
Regency Park Towers, C-806
Willow Grove, PA 19090

Dear Mr. & Mrs. Battis:

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
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ALBERT M. BATTIS AND KATHERINE E. BATTIS : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Taxes under Article :
22 of the Tax Law for the Years 1974 and 1975. :

Albert M. and Katherine E. Battis, Regency Park Towers, C-806, Willow Grove, Pennsylvania 19090, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1974 and 1975 (File No. 21884).

Petitioner Albert M. Battis has requested, in writing, that this matter be submitted to the State Tax Commission for a decision without the necessity of a formal hearing.

The State Tax Commission, based upon the record as it is presently constituted, renders the following decision.

ISSUE

Whether petitioner Albert M. Battis has substantiated the allocation of compensation to out of State sources as claimed on petitioners' New York nonresident returns for 1974 and 1975.

FINDINGS OF FACT

1. Petitioners, Albert M. and Katherine Battis, filed New York State income tax nonresident returns for the years 1974 and 1975.
2. On the returns petitioner Albert Battis reported for Federal purposes, wages, salaries, etc. of \$58,580.00 for 1974 and \$62,702.00 for 1975, whereas for New York State, he only reported \$19,527.00 and \$20,900.00 respectively.

3. On their New York return for 1974 petitioners allocated Mr. Battis' wage and salary income by the total days claimed to have been worked in New York (78) over total days worked in the year (234). Applying the equation of $78/234 \times \$58,580.00 = \$19,527.00$, they reported as New York income the amount of \$19,527.00.

4. For 1975, petitioners again claimed 78 days worked in New York out of 234 days worked in the year and reported New York income of \$20,900.00.

5. During the years 1974 and 1975 petitioner Albert M. Battis was employed by De-Jur Amsco Corporation, 45-01 Northern Boulevard, Long Island City, New York as sales manager. He received commissions on his own sales and an override commission on the commissions of other salesmen.

6. On July 30, 1976, the Audit Division requested additional information from petitioner Albert M. Battis in connection with an audit of the 1974 and 1975 returns. For each of the years 1974 and 1975, he was requested to submit the following:

- (a) The amount of any wages.
- (b) The amount of commissions on his sales only.
- (c) The amount of any override commissions on sales made by others.
- (d) Any other compensation included in the total.
- (e) The dollar amount of his total sales for the year and the total amount of his New York sales excluding sales made to others.

He was also requested to furnish a schedule of each date worked outside New York State, the exact location at which services were performed, the nature of services performed, whether days worked at home were included in days worked outside New York, the number of days and the reason services were performed at home.

7. On June 27, 1977, the Audit Division issued a statement of audit changes against Albert M. Battis and Katherine E. Battis, his wife, imposing additional tax in the amounts of \$4,766.22 and \$4,059.90 for the years 1975 and 1974, respectively with interest of \$1,245.35 for a total of \$10,071.47. Also on June 27, 1977, a Notice of Deficiency was issued to petitioners for said amount. The petitioners timely filed a petition with respect to said Notice of Deficiency. The Statement of Audit Changes was based on petitioners' failure to furnish the information requested in the Audit Division's letter of July 30, 1976. The allocation of compensation to out of State sources for 1974 and 1975 was disallowed as unsubstantiated.

8. Petitioners have failed to submit the additional information requested. It is claimed that such information is not presently available.

CONCLUSIONS OF LAW

A. That petitioners, Albert M. Battis and Katherine E. Battis, have failed to meet the burden of proof to show that the income received by Albert M. Battis from De-Jur Amsco Corporation may be allocated under 20 NYCRR 131.15 or 20 NYCRR 131.16.

B. That the allocation claimed by petitioners on their nonresident returns for 1974 and 1975 was properly disallowed.

C. That the petition of Albert M. and Katherine E. Battis for the years 1974 and 1975 is hereby denied.

DATED: Albany, New York

JUL 1 9 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER