

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stephen & Anna Cauley :
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 1975. :

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Stephen & Anna Cauley, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen & Anna Cauley
17230 Libertad Dr.
San Diego, CA 92127

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
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 20, 1980

Stephen & Anna Cauley
17230 Libertad Dr.
San Diego, CA 92127

Dear Mr. & Mrs. Cauley:

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 :
STEPHEN P. CAULEY and ANNA R. CAULEY : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Year 1975. :

Petitioners, Stephen P. and Anna R. Cauley, 17230 Libertad Drive, San Diego, California 92127, 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 1975 (File No. 22594).

On February 6, 1979, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the Commission, based on the entire record contained in the file.

ISSUE

Whether petitioners may deduct moving expenses from their New York resident income for a move from a New York residence to an out-of-state residence.

FINDINGS OF FACT

1. Petitioners, Stephen P. and Anna R. Cauley, timely filed a New York State personal income part-year resident tax return, in which they indicated their period of New York State residence to be from January 1, 1975 to November 21, 1975. On this return, petitioners deducted \$4,092.00 in moving expenses and excluded \$3,654.00 of wages received by petitioner Stephen P. Cauley while he was a nonresident.

2. On May 22, 1978, the Audit Division issued a Notice of Deficiency against petitioners, imposing additional personal income tax due of \$472.23, plus interest of \$84.35, for a total due of \$556.58. The Notice was issued on the grounds that the moving expenses were applicable to petitioners' period of nonresidence and were not connected with New York employment; therefore, they could not be deducted from their New York income.

3. Petitioners moved from New York to California during November 1975.

4. In their petition to New York State, petitioners contended they had New York income after moving to California. However, in a letter from petitioners dated February 28, 1978 to Franchise Tax Board, State of California, they stated that during their period of residency in California, they had no income.

5. Petitioners further contended that New York State resident instructions for Schedule A state that a taxpayer should use the same income and adjustments as used in the Federal return, and that the entire moving expense adjustments were allowed by the Internal Revenue Service because they related to the petroleum consulting partnership of Stephen P. Cauley and Anna R. Cauley, doing business as Stephen P. Cauley and Associates. They also contended that the business certificates for the partnership was executed in the County Clerk's Office, State of New York, County of Nassau, on October 17, 1975. The partnership is still in existence and doing business under the same name. It is licensed by the City of San Diego, California (license No. 46709), and its Internal Revenue Service number is 95-30-84592.

6. The petitioners submitted an invoice from Atlas Van Lines made out to Mobil Oil Corporation and dated December 16, 1975 in the amount of \$2,949.69 for packing, transportation and miscellaneous services. Attached to the Atlas Van Lines invoice was a bill dated December 19, 1975 from Mobil Oil Corporation to S.P. Cauley stating they had charged his account in the amount of \$1,121.39. Based on the invoices the moving expense liability was incurred after moving out of New York State.

CONCLUSIONS OF LAW

A. That moving expenses are deductible on a part-year resident return in accordance with the meaning and intent of section 654(c) of the Tax Law, when such expenses are shown to be paid or incurred prior to moving out of New York State. Petitioners did not sustain the burden of proof established by section 689(e) of the Tax Law, which requires them to show that the moving expenses were paid or incurred during their residence in New York State.

B. That the petition of Stephen P. and Anna R. Cauley is denied and the Notice of Deficiency issued on May 22, 1978 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER