

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Charles A. & Elizabeth T. Cronheim :
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 1972. :

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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Charles A. & Elizabeth T. Cronheim, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

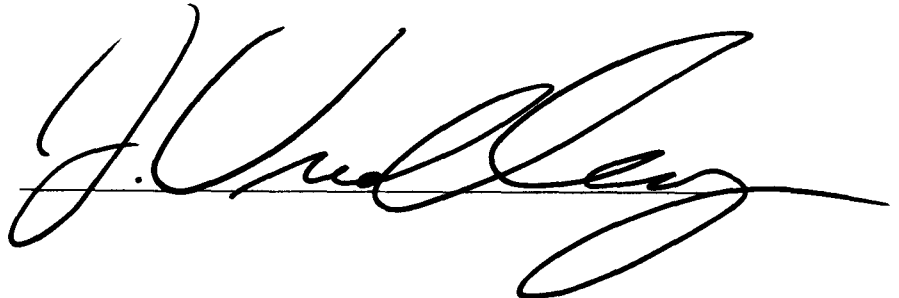
Charles A. & Elizabeth T. Cronheim
Black Stump Rd.
Weems, VA 22576

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
21st day of March, 1980.

Joanne Knapp



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

March 21, 1980

Charles A. & Elizabeth T. Cronheim
Black Stump Rd.
Weems, VA 22576

Dear Mr. & Mrs. Cronheim:

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 :
CHARLES A. CRONHEIM and ELIZABETH T. CRONHEIM : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Year 1972. :
:

Petitioners, Charles A. Cronheim and Elizabeth T. Cronheim, Black Stump Road, Weems, Virginia 22576, 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 1972 (File No. 15490).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 29, 1977 at 1:00 P.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether the Income Tax Bureau's disallowance of allocation of earned income to a nonresident was proper.

FINDINGS OF FACT

1. Petitioners, Charles A. Cronheim and Elizabeth T. Cronheim, timely filed a nonresident income tax return for 1972.
2. On March 29, 1976, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against petitioners imposing income tax due of \$5,329.63 for 1972, plus interest of \$1,180.51, for a total due of \$6,510.14.

3. The Statement of Audit Changes stated that allocation of income from Peerage Properties, Inc. and R. H. Macy & Co., Inc. had been disallowed, since information theretofore submitted by petitioners had not substantiated that services had been performed outside New York State for wage income. Recomputation of the New York State Nonresident Income Tax Return was based on Charles A. Cronheim's entire wage income of \$55,416.67 for 1972.

4. For a number of years, petitioner Charles A. Cronheim was a senior vice-president and director of R. H. Macy & Co., Inc. He was in charge of real estate for the corporation and was directly in charge of its plant expansion program. Much of his work dealt with the development of regional shopping centers. On August 1, 1971, petitioner Charles A. Cronheim returned to R. H. Macy & Co., Inc. after an illness and requested early retirement. He actually retired as of November, 1971, but agreed to be available for telephone consultation respecting Macy projects. He did in fact consult with R. H. Macy & Co., Inc. on real estate matters throughout 1972.

5. On February 15, 1972, petitioner Charles A. Cronheim became Chairman of the Board and a director of Peerage Properties, Inc. (hereinafter "Peerage"). Mr. Cronheim's compensation was as follows: as a consultation fee, he was to be paid at the rate of \$60,000.00 per year; as a director of Peerage, he was to receive a flat \$5,000.00 annually; and as a member of the Finance Committee and the Investment Committee, he was to be paid \$300.00 per meeting. The meetings were scheduled for the main office of Peerage in New York City. Peerage paid a total of \$52,500.00 to petitioner Charles A. Cronheim in 1972. Federal and state income taxes were withheld. R. H. Macy & Co., Inc. paid petitioner Charles A. Cronheim \$2,916.67 in 1972. No Federal or state income taxes were withheld by Macy's.

6. Petitioner Charles A. Cronheim was a nonresident. He resided in New Jersey until the early part of 1972, when he moved to Virginia.

7. Petitioner Charles A. Cronheim had no office in New York in 1972. All of his consultation work with Macy's was done by telephone from his Virginia home. All of the consultation work for Peerage and travel to various real estate sites and shopping centers throughout the United State and Canada was done outside New York State. Mr. Cronheim had no records and could give no approximation of the number of days in 1972 that he worked for Peerage outside New York State. Petitioner averred that he had attended twenty-four meetings at Peerage in New York in 1972 and spent part or all of twenty-four days at such meetings.

8. Petitioner Charles A. Cronheim was a corporate officer (as Chairman of the Board) of Peerage from February 15, 1972 throughout the balance of 1972.

CONCLUSIONS OF LAW

A. That if a nonresident employee (including a corporate officer) performs services for his employer both within and without New York State, his income derived from New York sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within the State bears to the total number of working days employed both within and without the State. (20 NYCRR 131.16)

B. That petitioners failed to sustain the burden of proof imposed by section 689(e) of the Tax Law that the \$55,416.67 earned by petitioner Charles A. Cronheim in 1972 was not income from New York sources.

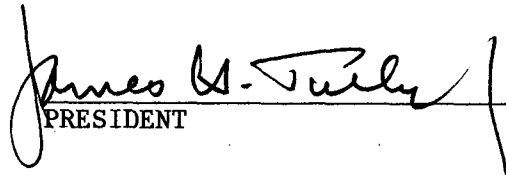
C. That the Notice of Deficiency dated March 29, 1976 is sustained and


the petition of Charles A. Cronheim and Elizabeth T. Cronheim is in all respects denied.

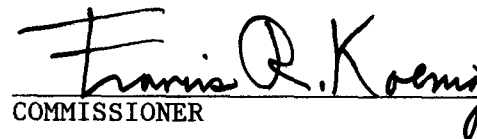
DATED: Albany, New York

STATE TAX COMMISSION

MAR 21 1980


PRESIDENT


COMMISSIONER


COMMISSIONER