

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Michael & Carol Golden :
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 1974. :

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 14th day of March, 1980, he served the within notice of Decision by certified mail upon Michael & Carol Golden, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

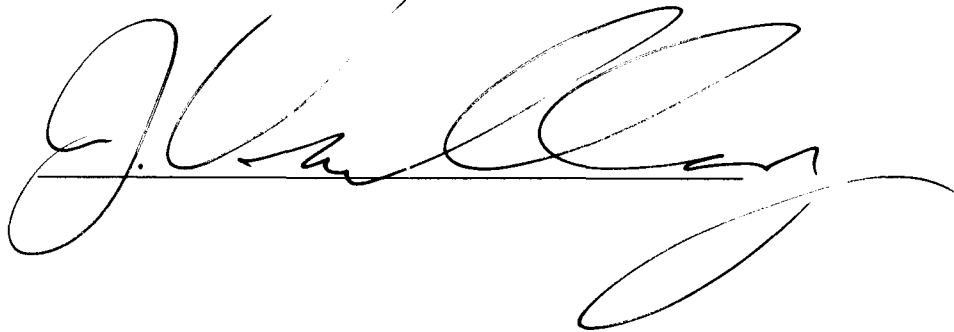
Michael & Carol Golden
231 W. San Mateo Rd.
Santa Fe, NM 87501

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
14th day of March, 1980.

Joanne Knapp



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

March 14, 1980

Michael & Carol Golden
231 W. San Mateo Rd.
Santa Fe, NM 87501

Dear Mr. & Mrs. Golden:

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 :
MICHAEL J. GOLDEN and CAROL A. GOLDEN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1974. :

Petitioners, Michael J. Golden and Carol A. Golden, 231 West San Mateo Road, Santa Fe, New Mexico 87501, 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 1974 (File No. 22642).

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 March 26, 1979 at 9:15 A.M. Petitioners appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioners properly deducted moving expenses for New York State personal income tax purposes.

FINDINGS OF FACT

1. Petitioners, Michael J. Golden and Carol A. Golden, timely filed a joint New York State Income Tax Nonresident Return for 1974 on which they deducted moving expenses of \$5,604.00.

2. On April 14, 1978, the Audit Division issued a Notice of Deficiency against petitioners for 1974 in the sum of \$1,192.30. Said notice indicated that the following adjustments were made:

When a taxpayer changes his status from resident to nonresident, a deduction for moving expenses, related to work at a location not within New York State, is not allowed.

Section 612(b) (8) of the New York State Tax Law requires a shareholder of a professional corporation to add to his Federal adjusted gross income the amount of taxes paid by the corporation for old age, survivors and disability insurance on FICA wages for the calendar year of the shareholder. This does not include payment for hospital (Medicare) insurance.

Section 612(b) (9) of the New York State Tax Law requires a shareholder of a professional corporation to add to his Federal adjusted gross income the amount paid by the corporation on behalf of the shareholder employee for the purchase of life, accident or health insurance, except for amounts attributable to the purchase of insurance to reimburse the shareholder for medical expenses incurred.

Adjustments in accordance with sections 612(b) (8) and 612(b) (9) of the Tax Law were conceded to by petitioners and are not at issue.

3. Petitioners, Michael J. Golden and Carol A. Golden, resided in South Orange, New Jersey during the entire calendar year 1974.

4. Petitioner Michael J. Golden is an attorney and was employed by Tanner and Friedman, PC in New York City until December, 1974.

5. Petitioner Michael J. Golden obtained employment in the State of New Mexico and, as a result, moved to said state in January, 1975. The moving expenses which are at issue and which amounted to \$5,604.00 were expended in 1974.

6. Petitioner Michael J. Golden contended that at the time moving expenses were expended he was employed in New York State and therefore, he was entitled to deduct said expenses on his New York State nonresident return for 1974.

7. Although the Audit Division conceded that its original finding regarding petitioners' change of status from resident to nonresident was erroneous, the Division contended that moving expenses were not deductible since petitioner Michael Golden was a nonresident who changed his work location from New York to New Mexico.

CONCLUSIONS OF LAW

A. That a nonresident is entitled to deduct only deductions derived from or connected with New York sources which are attributable to the ownership of any interest in real or tangible personal property in this state or a business, trade, profession or occupation carried on in this state (section 632(b) of the Tax Law).

B. That section 217 of the Internal Revenue Code provides that moving expenses are allowed as a deduction when paid or incurred "in connection with the commencement of work" by the taxpayer "at a new principal place of work". Therefore, moving expenses of \$5,604.00, incurred by petitioner Michael J. Golden in connection with the commencement of work at his new principal place of work in New Mexico, do not constitute a deduction derived from or connected with a business, trade, profession or occupation carried on in New York State in accordance with the meaning and intent of section 632(b) of the Tax Law and 20 NYCRR 131.2.

C. That the petition of Michael J. Golden and Carol A. Golden is denied and the Notice of Deficiency issued April 14, 1978 for the year 1974 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

MAR 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER