

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Richard M. & Barbara B. Ketchum :

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 1970, 1973 & 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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Richard M. & Barbara B. Ketchum, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

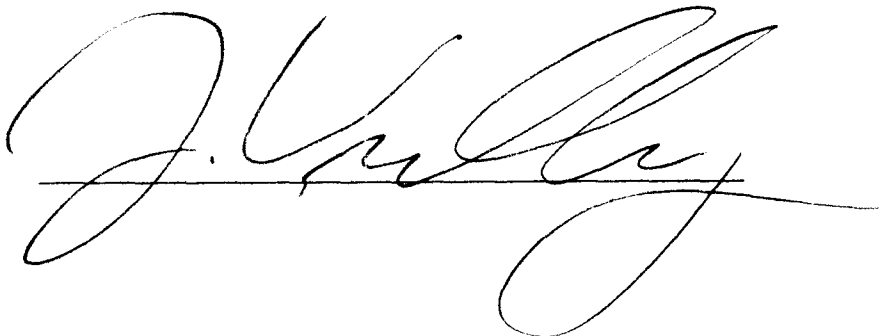
Richard M. & Barbara B. Ketchum
RFD
Dorset, VT 05251

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
17th day of October, 1980.

Deborah A Bank



STATE OF NEW YORK
STATE TAX COMMISSION

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of

Richard M. & Barbara B. Ketchum :

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for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
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for the Years 1970, 1973 & 1974. :

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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Edward H. Pattison the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

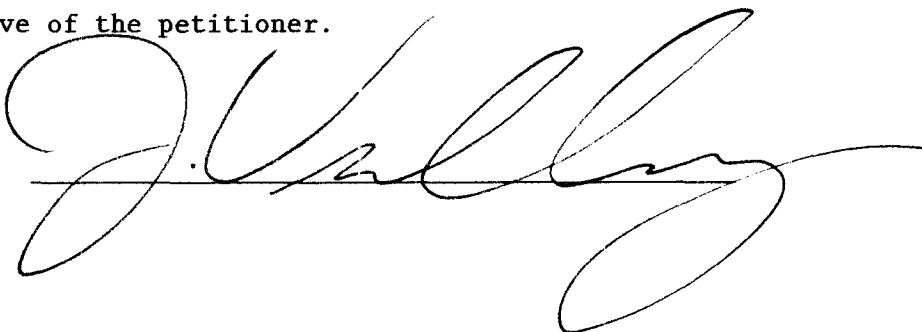
Mr. Edward H. Pattison
Pattison, Sampson, Ginsberg & Griffin
22 First Street, P.O. Box 899
Troy, NY 12181

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
17th day of October, 1980.

Deborah A. Bank



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

October 17, 1980

Richard M. & Barbara B. Ketchum
RFD
Dorset, VT 05251

Dear Mr. & Mrs. Ketchum:

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
Edward H. Pattison
Pattison, Sampson, Ginsberg & Griffin
22 First Street, P.O. Box 899
Troy, NY 12181
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
RICHARD M. KETCHUM AND BARBARA B. KETCHUM : DECISION
for Redetermination of Deficiencies or for :
Refund of Personal Income Taxes under Article :
22 of the Tax Law for the Years 1970, 1973 and :
1974. :
:

Petitioners, Richard M. Ketchum and Barbara B. Ketchum, R.F.D. Dorset, Vermont 05251, filed petitions for redetermination of deficiencies or for refund of personal income taxes under Article 22 of the Tax Law for the years 1970, 1973 and 1974 (File Nos. 15238 and 18250).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on March 26, 1980 at 1:00 P.M. Petitioners appeared by Pattison, Sampson, Ginsberg & Griffin, Esqs. (Edward H. Pattison, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUE

Whether the days on which petitioner Richard M. Ketchum worked at his home in Dorset, Vermont during 1970, 1973 and 1974, constituted days worked outside of New York for purposes of income allocation.

FINDINGS OF FACT

1. Petitioners, Richard M. Ketchum and Barbara B. Ketchum, filed a New York State Income Tax Resident Return for the period January 1, 1970 to June 30, 1970, and a New York State Nonresident Return for the period July 1, 1970 to December 31, 1970. On the latter return, petitioner Richard M. Ketchum allocated his income on the basis of days worked within and without New York State.

2. Petitioner on November 7, 1973, signed a consent extending period of limitations for assessment for the year 1970 to April 15, 1975. On January 10, 1975, petitioners signed another consent extending period of assessment for the year 1970 to April 16, 1976.

3. On March 29, 1976, the Audit Division issued a Notice of Deficiency against the petitioners for 1970, asserting personal income tax of \$1,940.74, plus interest of \$576.98, for a total due of \$2,517.72. The Notice was issued on the basis that income earned by petitioner Richard M. Ketchum for days worked at his home in Dorset, Vermont, was not allocable to sources outside New York State, but rather such income was attributable to New York State.

4. Petitioners filed New York State nonresident income tax returns for 1973 and 1974, on which petitioner Richard M. Ketchum allocated his income on the basis of days worked within and without New York State.

5. On January 24, 1977, the Audit Division issued a Notice of Deficiency against petitioners for 1973 and 1974, asserting personal income tax of \$4,068.55, plus interest of \$709.74, for a total due of \$4,778.29. The Notice was issued on the basis that income earned by petitioner Richard M. Ketchum for days worked at his home in Dorset, Vermont was not allocable to sources outside New York State, but rather such income was attributable to New York State.

6. Petitioner Richard M. Ketchum was employed by American Heritage Co., Inc., (hereinafter "Heritage") as editor in chief of its Book Department from 1956 through June 30, 1970. The principal corporate headquarters of "Heritage" is located in the City of New York.

7. On or about April 2, 1970 petitioner Richard M. Ketchum and "Heritage" entered into a new employment agreement to commence on or about July 1, 1970. The agreement provided, in relevant part, that, the nature of services to be rendered by petitioner shall be substantially similar to those creative services

rendered by petitioner in the past for Heritage; that petitioner shall render services to Heritage on a full time basis for thirteen full weeks out of each six month period; that one half of such working time to be spent by petitioner Richard M. Ketchum at "Heritages" principal offices in New York City; that "Heritage" will furnish petitioner Richard M. Ketchum with an office and with secretarial assistance.

8. Petitioner Richard M. Ketchum contended that pursuant to his new employment agreement with "Heritage", his duties and functions materially changed. That he was required to work one week a month at "Heritage's" principal offices in New York City, and one week a month at his home in Dorset, Vermont at half of his former salary. He also contended that the work done at his home in Dorset, Vermont from July 1, 1970, could not have been done at the New York City offices of "Heritage", because he was engaged in the planning and creation of a book dealing with country living, which ultimately became a consumer magazine. He contended that the data and information for this magazine could only be obtained from first hand contact with rural people.

Petitioner Richard M. Ketchum further contended that in 1970 he was also engaged in writing a book for "Heritage" entitled the "Secret Life of the Forest". That Heritage chose him to develop and write the book because of the close proximity of the forest and foresters, located near his new domicile in Dorset, Vermont.

9. Petitioner Richard M. Ketchum initiated the book "Secret Life of the Forest" during the early part of January, 1970, prior to effecting a change in domicile from New York to Vermont, and so informed James Parton, President of Heritage in his correspondence to him under date of January 21, 1976.

10. Petitioner Richard M. Ketchum's duties and services to be rendered to "Heritage" was substantially similar to those performed prior to effecting a

change in domicile from New York to Vermont. In addition, the changes made in the new employment agreement were made for the convenience of petitioner Richard M. Ketchum and not because "Heritage" required him to work out of state.

11. In 1973, petitioner Richard M. Ketchum initiated two books for "Heritage". One book was a biography of Will Rogers and the other was a biography of George Washington. Petitioner Richard M. Ketchum developed his source material for the Will Rogers book by going to the Will Rogers Memorial Library located in Claremont, Oklahoma, and to the the ranch formerly owned by Will Rogers in Santa Monica, California and now owned by his two sons whom he interviewed. The total number of days spent in gathering the source material for the Will Roger's book without New York was twenty two (22) days.

Petitioner Richard M. Ketchum developed his source material for the George Washington book by going to Washington and Virginia where he spent ten (10) days.

The total number of days spent in 1973 gathering source material for both the Will Rogers and George Washington books was approximately thirty two (32) days. Said days without New York State for 1973 was required by "Heritage" and performed for its necessity.

12. Petitioner Richard M. Ketchum contended that for 1974 he was finishing up the George Washington book for "Heritage", and that he spent only three days in New York winding up his business relationship with Heritage.

13. The work done on the George Washington book completed at petitioner Richard M. Ketchum's home in Dorset, Vermont, was done for petitioner's convenience and not for "Heritage's" necessity.

CONCLUSIONS OF LAW

A. That days worked by petitioner Richard M. Ketchum at his home in

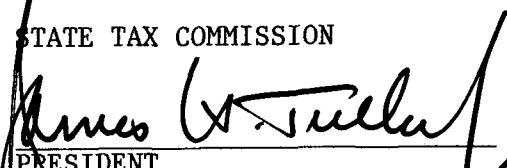


Dorset, Vermont, during 1970, 1973 and 1974 were not days worked without New York State for income allocation purposes. Petitioner offered no evidence that the services performed at his out of State home could not have been undertaken at the employer's New York City offices (Matter of Speno, 35 NY 2d 256; Matter of Gross v. State Tax Commission, 62 A.D. 2d 1117).

B. Petitioner Richard M. Ketchum established that the thirty two (32) days spent without New York State in 1973, in gathering source material for the Will Rogers and George Washington books were for his employer's necessity. That said days worked outside the State were based upon the performance of services which of necessity obligated petitioner's out of state duties in the services of his employer (20 NYCRR 131.16). Accordingly such days (32) shall constitute days worked outside New York State for income allocation purposes.

C. That the petition of Richard M. Ketchum and Barbara B. Ketchum for 1973 and 1974 is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the notice of deficiency dated January 24, 1977 and that except as so granted, the petition is in all other respects denied.

D. That the Notice of Deficiency issued on March 29, 1976 for the year 1970 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York
OCT 17 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER