

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gerald Luff :
and Ellen S. Luff : 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 1973. :

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 Gerald Luff, and Ellen S. Luff, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald Luff
and Ellen S. Luff
18025 Medley Drive
Encino, CA 91316

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

In the Matter of the Petition :
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and Ellen S. Luff : AFFIDAVIT OF MAILING
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Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1973. :

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 Arthur Green 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. Arthur Green
3435 Wilshire Blv. Suite 2118
Los Angeles, CA 90010

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.

Dorothy A. Bank

J. Willey

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

October 17, 1980

Gerald Luff
and Ellen S. Luff
18025 Medley Drive
Encino, CA 91316

Dear Mr. & Mrs. Luff:

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
Arthur Green
3435 Wilshire Blv. Suite 2118
Los Angeles, CA 90010
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

GERALD LUFF and ELLEN S. LUFF :

DECISION

for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1973.

Petitioners, Gerald Luff and Ellen S. Luff, 18025 Medley Drive, Encino, California 91316, 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 1973 (File No. 17708).

A formal hearing was scheduled to be held at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on April 19, 1978. By letter dated March 31, 1978, petitioners' representative, Arthur C. Green, CPA, requested that this matter be submitted to the State Tax Commission, based on the entire record contained in the file.

ISSUE

Whether petitioners' amended 1973 part year resident return properly reflected income and deductions attributable to the period of New York residence.

FINDINGS OF FACT

1. Petitioners, Gerald Luff and Ellen S. Luff, his wife, filed a joint New York State Income Tax Resident Return (Form IT-201) for the period January 1, 1973 to March 31, 1973. They did not file a nonresident return for the period April 1, 1973 to December 31, 1973, since they claimed that they had no New York source income for the aforementioned period. They reported New York income of \$36,473.00. Attached to the return was a wage and tax statement indicating wages paid to Gerald Luff in 1973 of \$36,375.01.

2. On January 2, 1975, petitioners filed an amended New York State Income Tax Resident Return for 1973, on which they reported New York income of \$7,494.00. Petitioner Gerald Luff claimed business expenses of \$29,385.00. Petitioners claimed a refund of \$3,121.00. The Audit Division denied the claim for refund on March 29, 1976 and petitioners filed a timely petition with respect to said denial.

3. Prior to March 31, 1973, petitioners were domiciliaries of New York State and residents thereof. Prior to March 31, 1973, petitioner Gerald Luff was employed as a sales representative by Warnaco, Inc., which firm was headquartered in New York City. Petitioner Gerald Luff claims that his contract of employment with Warnaco was for a period of twenty-one months from January 1, 1973; that he worked for the firm until March 31, 1973; that he negotiated a settlement with respect to the agreement; and that he received a total of \$36,375.01 from Warnaco, of which he claims only \$7,494.00 is attributable to New York sources.

4. By letter dated November 17, 1975, the Audit Division requested that petitioners furnish additional information with respect to their 1973 claim for refund. Specifically, it requested the following:

- (a) "Please submit a statement showing a breakdown of the wages received from Warnaco, Inc. (\$36,375.01). Show amount earned for the period that you were a resident (1/1/73 to 3/31/73) and the amount that was earned during the nonresident period. If any of the amount of \$36,375.01 was accrued income as of 3/31/73, please indicate what the accruals represent and the amounts..."
- (b) "Submit a schedule of your Federal itemized deductions for the period 1/1/73 to 12/31/73."

5. By letter dated August 12, 1975, the Audit Division requested the following from the accountant for petitioners:

- (a) "Submit a copy of the 1973 Federal Schedule C for the period your clients were New York residents..."
- (b) "To substantiate the amount of \$6,990.00 claimed as net business income on your client's amended return, kindly furnish a complete breakdown of the \$29,385.00 claimed as business expenses - showing the date paid, to whom paid, the amount paid, and the nature of the expense..."
- (c) "To substantiate the itemized deductions of taxes \$8,833.00 and interest expenses,... kindly furnish a list showing to whom paid, the amount paid, the date paid, and the nature of the tax or the interest paid. Attach receipts or documents issued for the payment of each expense. The documents will be returned to your clients upon the completion of our audit..."

6. In a letter from petitioners' accountant to the Audit Division dated September 22, 1975, it is stated, in part, that:

"We are not in a position to provide you with the information and analysis which you have requested in August 12, 1975, correspondence regarding the 1973 amended New York State income tax return for Gerald and Ellen Luff. The reasons are that the Luffs are not in business and, therefore, do not keep regular accounting books and records, transactions for the year 1973 which comprise various deductions on their returns are numerous in nature and very small in amounts."

The letter further stated that:

"The Luffs lived in New York for a number of years through and inclusive approximately June of 1973. The Luffs sold their house about the latter part of June, 1973, and moved to California."

7. Despite repeated requests for additional information, petitioner Gerald Luff has failed to furnish concrete information as to what part of his wages and expenses were attributable to the period of New York residence.

CONCLUSIONS OF LAW

A. That the burden of proof as to the issues involved in this case is upon the petitioners (section 689(e) of the Tax Law).

B. That in the absence of proof to the contrary, it must be assumed that the income received by petitioner Gerald Luff from his New York employer represented severance pay attributable to New York sources.

C. That in the absence of proof to the contrary, it must be assumed that the income received by petitioner Gerald Luff accrued prior to the change of status from resident to nonresident and was, therefore, attributable to the period of New York residence.

D. That petitioners have failed to submit any proof that the expenses allowed by the Internal Revenue Service were incurred while a resident of the State of New York.

E. That no evidence has been submitted to indicate that the original 1973 return was incorrect; therefore, the Notice of Disallowance issued March 29, 1976 is sustained.

F. That the petition of Gerald Luff and Ellen S. Luff is denied.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER