

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Walter T. Margetts, Jr. :
and Josephine S. Margetts : 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 5th day of September, 1980, he served the within notice of Decision by certified mail upon Walter T. Margetts, Jr., and Josephine S. Margetts, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Walter T. Margetts, Jr.
and Josephine S. Margetts
Holly Hill Farm
Morristown, NJ 07960

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
5th day of September, 1980.

Debbie Bank

J. Vredenburg

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

September 5, 1980

Walter T. Margetts, Jr.
and Josephine S. Margetts
Holly Hill Farm
Morristown, NJ 07960

Dear Mr. & Mrs. Margetts:

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
WALTER T. MARGETTS, JR. and JOSEPHINE S. MARGETTS
for Redetermination of a Deficiency or for Refund
of Personal Income Tax under Article 22 of the
Tax Law for the Year 1973.

DECISION

Petitioners, Walter T. Margetts, Jr. and Josephine S. Margetts, Holly Hill Farm, Blue Mill Road, Morristown, New Jersey 07960, 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. 18784).

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 August 15, 1979 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (A. Schwartz, Esq., of counsel).

ISSUE

Whether the income received by petitioner Walter T. Margetts, Jr. from his employer, the Hudson and Manhattan Corporation, during 1973 was properly allocated, based on days worked within and without New York State.

FINDINGS OF FACT

1. Petitioners, Walter T. Margetts, Jr. and Josephine S. Margetts, filed a joint New York State Income Tax Nonresident Return for 1973. Petitioner Walter T. Margetts, Jr. allocated his salary income of \$29,166.66 (received from his New York employer) based on the number of days worked within and without New York State.

2. On February 28, 1977, the Audit Division issued a Notice of Deficiency and an explanatory Statement of Audit Changes to petitioner, whereby the

salary income of \$29,166.66 was held to be fully taxable, without the benefit of allocating income based on the number of days worked within and without New York State. In addition, a corrective adjustment pursuant to section 636(a) of the Tax Law was made. This correction was not challenged by petitioner Walter T. Margetts, Jr.

3. During 1973, petitioner Walter T. Margetts, Jr. was employed by the Hudson and Manhattan Corporation, with offices at 33 Church Street, New York, New York. This corporation did not maintain an office in the State of New Jersey. Petitioner's duties were primarily concerned with the purchase of short-term securities.

4. During 1973, petitioner Walter T. Margetts, Jr. was also employed by, and chairman of the board of, the Laytham Foundry, with offices in Paterson, New Jersey.

5. Petitioner's services for the Hudson and Manhattan Corporation were rendered in New York State and in New Jersey, through his office at the Laytham Foundry. Petitioner's commitments to the Laytham Foundry required that he be at their offices in New Jersey. He utilized the New Jersey office, along with its secretarial services, to carry out his duties on behalf of the Hudson and Manhattan Corporation.

CONCLUSIONS OF LAW

A. That the days worked at the offices of Laytham Foundry, Inc. in Paterson, New Jersey, by petitioner Walter T. Margetts, Jr. during 1973 were worked there by reason of his own convenience and not for the necessity of his employer, the Hudson and Manhattan Corporation. Therefore, for purposes of allocating salary income, all days worked at the offices of Laytham Foundry, Inc. during 1973 must be held to be days worked within New York State, in

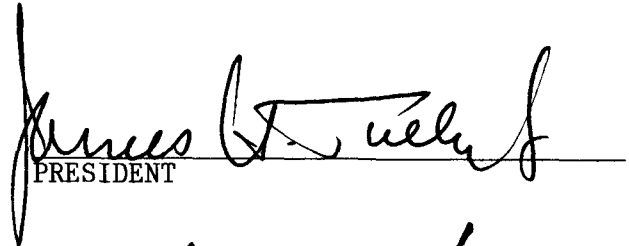
accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

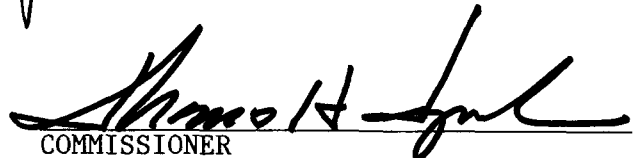
B. That the petition of Walter T. Margetts, Jr. and Josephine S. Margetts is denied and the Notice of Deficiency issued February 28, 1977 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER