STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of Michael Price	:	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 1970.	:	

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 11th day of April, 1980, he served the within notice of Decision by certified mail upon Michael Price, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Price
6016 Cape Charles Dr.
Indianapolis, IN 46226

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
11th day of April, 1980.

Joanne Knapp

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

April 11, 1980

Michael Price
6016 Cape Charles Dr.
Indianapolis, IN 46226

Dear Mr. Price:

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
Ira Levy
Block & Levy
450 7th Ave.
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MICHAEL PRICE	:	DECISION
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1970.	:	

Petitioner, Michael Price, 6016 Cape Charles Drive, Indianapolis, Indiana 46226, 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 1970 (File No. 13359).

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 December 13, 1978 at 10:45 A.M. Petitioner appeared by Ira Levy, CPA. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether a bonus paid to petitioner Michael Price, a nonresident individual, is taxable for New York State personal income tax purposes.

FINDINGS OF FACT

1. Petitioner, Michael Price, timely filed a New York State Income Tax Nonresident Return for the year 1970. On this return, he reported $6,857.00 as New York adjusted gross income, by allocating his salary of $12,000.00 by a ratio of 24/42.

2. On February 26, 1973, the Income Tax Bureau issued a Notice of Deficiency, along with an explanatory statement of audit changes, holding that a bonus of $15,000.00 received in 1970 (in addition to his salary of $12,000.00) was taxable to New York and that the same ratio of 24/42 should be applied to it.

3. Petitioner Michael Price was a professional basketball player, residing in the State of Indiana during the year 1970.

4. Petitioner contended that during April, 1970, he received a bonus of $15,000.00 from Madison Square Garden, Inc. as an inducement to sign a three year player contract with the New York Knickerbockers (Knicks), a professional basketball team. He contended that the bonus was earned and paid in the State of Indiana, and that it was not in consideration of any games played during 1970.

5. Petitioner played in 42 games with the Knicks during 1970, which included 24 games played in New York State. The number of games played in New York State over the total number of games played was the basis for the ratio used to allocate petitioner's income from the Knicks.

6. Petitioner was given the opportunity to submit a copy of his players' contract, however, he did not submit a copy of the contract, or any other documentary evidence necessary to establish the terms, conditions and purpose of the bonus at issue. No sworn testimony was rendered by petitioner or any other witnesses.

CONCLUSIONS OF LAW

A. That petitioner, Michael Price, has failed to sustain the burden of proof required under section 689(e) of the Tax Law in establishing that the bonus of $15,000.00 was not advance compensation for games played during the year 1970.

B. That the petition of Michael Price is denied and the Notice of Deficiency issued February 26, 1973 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

APR 1 1 1980

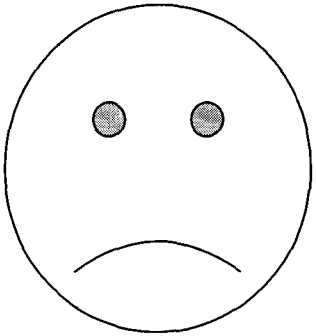
STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

CORRECTION FOLLOWS



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Michael Price :

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 1970. :

State of New York
County of Albany

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6016 Cape Charles Dr.
Indianapolis, IN 46226

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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
11th day of April, 1980.

Joanne Knapp

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Michael Price :

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 1970. :

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 11th day of April, 1980, he served the within notice of Decision by certified mail upon Ira Levy 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. Ira Levy
Block & Levy
450 7th Ave.
New York, NY 10001

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
11th day of April, 1980.

Janine Knapp

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

April 11, 1980

Michael Price
6016 Cape Charles Dr.
Indianapolis, IN 46226

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Phone # (518) 457-6240

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STATE TAX COMMISSION

cc: Petitioner's Representative
Ira Levy
Block & Levy
450 7th Ave.
New York, NY 10001
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STATE OF NEW YORK

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