

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Fergus Reid III :  
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. :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Fergus Reid III, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fergus Reid III  
124 Glenwood Dr.  
Greenwich, CT 06830

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  
23rd day of May, 1980.

Joanne Knapp



A large, stylized handwritten signature in cursive script, likely belonging to Jay Vredenburg, is written over a horizontal line.

STATE OF NEW YORK  
STATE TAX COMMISSION

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Personal Income Tax :  
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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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Bernard Segal 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. Bernard Segal  
c/o Joseph G. Krusch  
1450 Broadway  
New York, NY 10018

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  
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Fergus Reid III  
124 Glenwood Dr.  
Greenwich, CT 06830

Dear Mr. Reid:

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  
Bernard Segal  
c/o Joseph G. Krusch  
1450 Broadway  
New York, NY 10018  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
FERGUS REID, III : DECISION  
for Redetermination of a Deficiency :  
or for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for the :  
Year 1973. :

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Petitioner, Fergus Reid, III, 124 Glenwood Drive, Greenwich, Connecticut 06830, 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. 18055).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 21, 1979 at 9:15 A.M. Petitioner appeared by Joseph G. Krusch, Esq. (Bernard Segal, Esq., of counsel). The Audit Division appeared by Ralph Vecchio, Esq. (Irwin Levy, Esq. of counsel).

#### ISSUES

I. Whether petitioner properly allocated his wages to sources within and without New York State.

II. Whether petitioner is entitled to a casualty loss deduction as the result of storm damage to ornamental trees.

#### FINDINGS OF FACT

1. Petitioner, Fergus Reid, III, filed a New York State Income Tax Nonresident Return for the year 1973, wherein he claimed an allocation of wage income to sources within and without New York State. On Schedule A-1 of said return, he claimed forty-six days worked outside New York State.

2. On August 7, 1974, petitioner filed a claim for credit or refund, Form IT-113X, for the year 1973, wherein he requested a refund of \$451.43. Petitioner's basis for said claim was that a casualty loss was sustained in the gross amount of \$4,650.00, which was not claimed as a deduction on his return.

3. On February 28, 1977, the Audit Division issued a Statement of Audit Changes, wherein petitioner's claimed allocation was disallowed, resulting in his total wage income being treated as derived from New York State sources. Furthermore, petitioner's claim for a refund was denied since the casualty loss was unsubstantiated. Accordingly, on February 28, 1977, a Notice of Deficiency was issued against petitioner asserting additional personal income tax of \$1,488.01, plus interest of \$320.73, for a total due of \$1,808.74.

4. During 1973, petitioner, Fergus Reid, III, was the president and a major shareholder of Roosevelt & Son, Inc., a New York brokerage firm. At that time, the company was experiencing major financial difficulties and, as a result, was seeking to merge with some other suitable company. Negotiations for the merger were primarily carried out at petitioner's personal residence located in Connecticut. Petitioner contended that it was necessary for such negotiations to take place at his residence, since secrecy had to be maintained because not all of the officers and employees of Roosevelt & Son, Inc. could be included in the move resulting from the pending merger.

5. Petitioner's schedule indicated that ten days worked outside New York were at locations other than his residence. A copy of petitioner's business diary was introduced into evidence. It was partly illegible. On some of the days claimed as worked outside New York State, no notations were made in the diary. Other days only indicated names of persons or places, but no mention of the business purpose or nature of duties performed.

6. Petitioner contended that a casualty loss was sustained in December of 1973 as the result of damage inflicted upon five trees during a storm. These trees were on the same lot as his personal residence. The amount of the loss claimed was based on a written estimate of damage secured from a local landscape contractor.

7. Petitioner did not submit evidence to substantiate the decrease in value of his real property as a result of the casualty. Furthermore, no evidence was introduced with respect to the date of the storm, the extent of insurance recovery and the cost of repairs made to damaged trees.

CONCLUSIONS OF LAW

A. That any allowance claimed for days worked outside of the State must be based upon the performance of services, which of necessity - as distinguished from convenience - obligate the employee to out-of-state duties in the service of his employer (20 NYCRR 131.16). The fact that secrecy had to be maintained during the merger negotiations may have necessitated that the negotiations be conducted away from the business premises, but did not obligate petitioner to hold such negotiations at his out-of-state personal residence. Furthermore, other days claimed to have been worked without New York State are unsubstantiated.

Accordingly, petitioner's total wages are deemed to have been from sources within the State of New York within the meaning and intent of section 632 of the Tax Law.

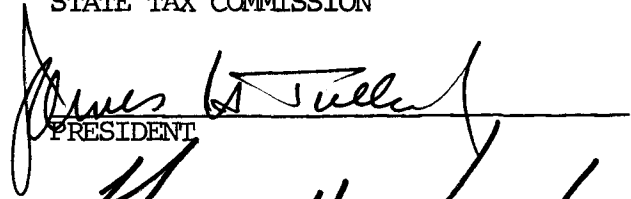
B. That the claim for credit or refund is denied since petitioner has not sustained the burden of proof required under section 689(e) of the Tax Law to show that a casualty loss was, in fact, sustained, and, if so, the extent of such loss.

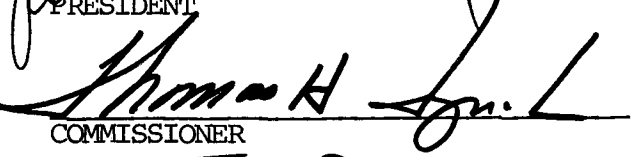
C. That the petition of Fergus Reid, III is denied and the Notice of Deficiency dated February 28, 1977 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER