

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Jasper L. Starnes :

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 1972. :

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 14th day of March, 1980, he served the within notice of Decision by certified mail upon Jasper L. Starnes, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jasper L. Starnes

P.O. Box 515

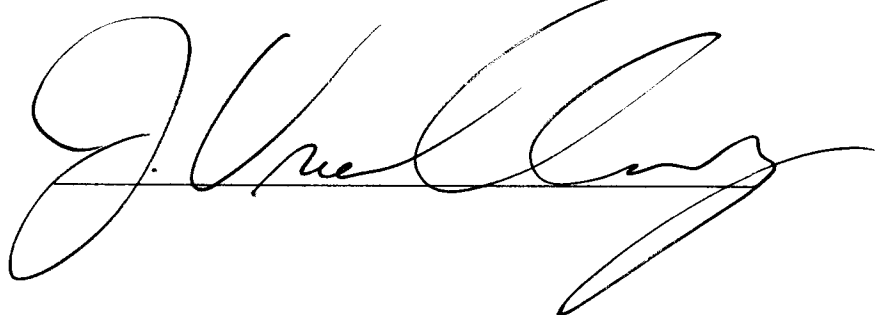
Wills Point, TX 75169

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
14th day of March, 1980.

Joanne Knapp



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

March 14, 1980

Jasper L. Starnes
P.O. Box 515
Wills Point, TX 75169

Dear Mr. Starnes:

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
JASPER L. STARNES
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1972.

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DECISION

Petitioner, Jasper L. Starnes, P.O. Box 515, Wills Point, Texas 75169, 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 1972 (File No. 14978).

On February 11, 1979, petitioner, Jasper L. Starnes, advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

Whether petitioner's allocation of days worked within and without New York State during 1972 is correct.

FINDINGS OF FACT

1. Petitioner, Jasper L. Starnes, filed a timely New York State Income Tax Nonresident Return for 1972. For wage allocation purposes, he claimed that he worked 280 days during the year, of which 170 days were days worked outside New York State. Jasper L. Starnes resigned his position with Atlantic Richfield Company effective July 31, 1972.

2. On April 3, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioner imposing additional personal income tax for 1972. This was based on petitioner's letter of January 26, 1975, in which he reported

total days 213 (January 1 through July 31), nonworking days 86, total working days 127, of which 17 were days worked outside New York State. Of the 17 days worked outside New York State, 7 were worked at home. The Income Tax Bureau treated these 7 days as days worked within New York State for income allocation purposes. Accordingly, on January 26, 1976, the Bureau issued a Notice of Deficiency for \$2,145.55 in personal income tax, plus \$447.91 in interest, for a total due of \$2,593.46.

3. On August 25, 1976, petitioner, Jasper L. Starnes, sent to the Bureau a check for \$2,682.08 which included updated interest. However, he did not sign the form for withdrawal of petition and discontinuance of case since he still disagreed with the adjustment.

4. In his correspondence, petitioner stated he worked only from January 1, 1972 to July 31, 1972. However, he contended that the allocation should have been computed on the basis of 366 days in the year and not on the 213 days as shown on the Statement of Audit Changes since he left his employment on July 31, 1972, and a sizable portion of his income for 1972 was not attributable to New York State.

5. Petitioner failed to submit any information as to whether any part of his compensation was in the nature of severance pay or whether he performed any services for his employer during the 7 day period he was requested by his supervisor not "to come to office"(sic).

CONCLUSIONS OF LAW

A. That petitioner, Jasper L. Starnes, has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that he rendered any services for or received any compensation from Atlantic Richfield Company after July 31, 1972.

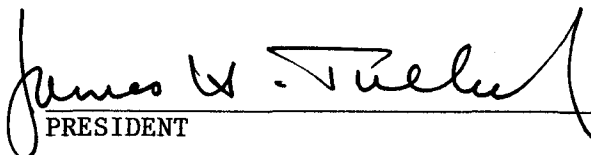
B. That an allocation of income based on the ratio that the number of days employed within the State bears to the total number of working days employed both within and without the State must include only days in the period of employment (January 1 through July 31). That the Income Tax Bureau properly allocated petitioner's income for 1972 pursuant to section 632(c) of the Tax Law and 20 NYCRR 131.16.


C. That the petition of Jasper L. Starnes is denied and the Notice of Deficiency issued January 26, 1976 is sustained.

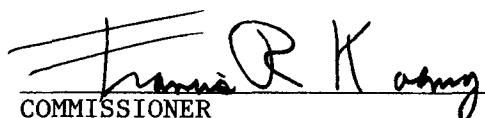
DATED: Albany, New York

STATE TAX COMMISSION

MAR 14 1980


PRESIDENT


COMMISSIONER


COMMISSIONER