

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Franklin P. Clayton :
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 :
1974.

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 October, 1981, he served the within notice of Decision by certified mail upon Franklin P. Clayton, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Franklin P. Clayton
144 Dodd St.
East Orange, NJ 07017

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 October, 1981.

Connie G. Hagelund

J. Vredenburg

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

October 23, 1981

Franklin P. Clayton
144 Dodd St.
East Orange, NJ 07017

Dear Mr. Clayton:

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	:	
FRANKLIN P. CLAYTON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioner, Franklin P. Clayton, 144 Dodd Street, East Orange, New Jersey 07010, 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 1974 (File No. 22040).

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 May 8, 1981 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner's wage income derived from the Federal Government, for services which were rendered in a building operated by the Federal Government but located in New York State, is subject to New York State personal income tax.

II. Whether the imposition of New York State personal income tax on petitioners wage income was in violation of the United States Constitution.

FINDINGS OF FACT

1. Petitioner, Franklin P. Clayton, timely filed a New York State Income Tax Nonresident Return for the year 1974 whereon he failed to include as New York income, wages derived from the United States Department of the Treasury

for services rendered entirely at the United States Customhouse located at 6 World Trade Center, New York City. In accordance with said filing, petitioner received a refund of the entire New York State tax withheld of \$419.70.

2. On September 8, 1977 the Audit Division issued a Statement of Audit Changes to petitioner wherein his wage income was held subject to New York State personal income tax since he failed to substantiate that such income was derived for services rendered without New York State. Accordingly, a Notice of Deficiency was issued against petitioner on February 27, 1978 asserting personal income tax of \$369.56, plus interest of \$90.19, for a total due of \$459.75.

3. Petitioner contended that as a nonresident working for the Federal Government on Federal property, his wages were not subject to New York State personal income tax and that such taxation by New York State of said income was in violation of the United States Constitution.

CONCLUSIONS OF LAW

A. That petitioner, Franklin P. Clayton, performed services within New York State and the wage income derived therefrom is subject to New York State personal income tax within the meaning and intent of section 632 of the Tax Law and 20NYCRR 131.4(b).

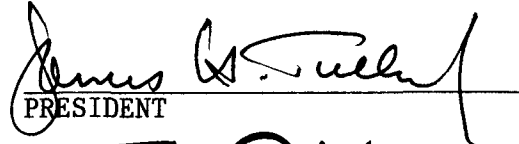
B. That the constitutionality of the laws of the State of New York are presumed at the administrative level by the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore it must be presumed that section 632 of the Tax Law is constitutional to the extent that it relates to the imposition of a personal income tax liability on the petitioner.

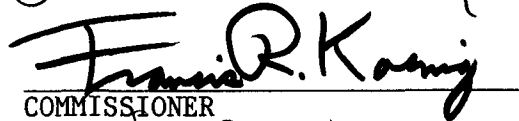
C. That the petition of Franklin P. Clayton is denied and the Notice of Deficiency dated February 27, 1978 is sustained together with such additional interest as may be lawfully owing.

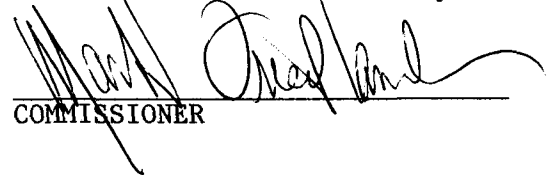
DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER