

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Peter J. Gould :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Peter J. Gould, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

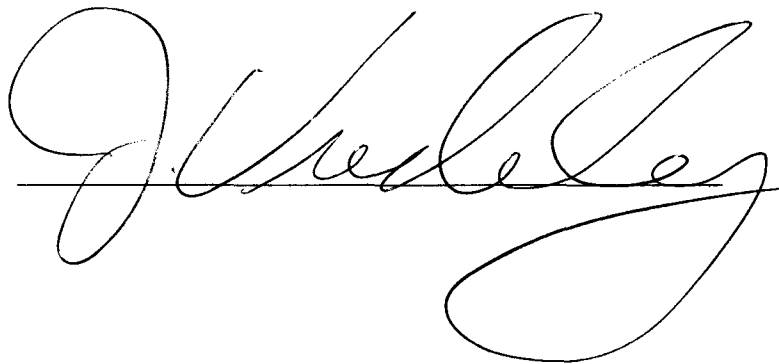
Peter J. Gould  
Cherry Hill Farm  
Taconic Rd.  
Greenwich, CT 06830

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  
20th day of February, 1981.

*Conna A. Hagelund*



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

February 20, 1981

Peter J. Gould  
Cherry Hill Farm  
Taconic Rd.  
Greenwich, CT 06830

Dear Mr. Gould:

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 TAX COMMISSION

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 June 26, 1980 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

## ISSUES

I. Whether petitioner is properly entitled to allocate nineteen days spent in Europe as days worked without New York State.

II. Whether petitioner is properly entitled to deduct miscellaneous itemized deductions of \$2,739.41.

## FINDINGS OF FACT

1. Petitioner, Peter J. Gould, filed a New York State Income Tax Nonresident Return for the year 1970 whereon he reported an allocation of wages to sources within and without New York State.

2. On August 24, 1973, the Audit Division issued a Statement of Audit Changes to petitioner wherein, as the result of his failure to submit information requested, his claimed allocation of wages was disallowed in its entirety. Additionally, claimed miscellaneous itemized deductions of \$2,739.41 were disallowed in full on the same basis. Accordingly, a Notice of Deficiency was issued against petitioner on March 25, 1974 asserting additional personal income tax of \$1,347.05, plus interest of \$237.94, for a total due of \$1,584.99.

3. On June 12, 1974, based on additional information submitted, the Review Unit, Income Tax Bureau abated \$1,067.56 of the tax deficiency, plus \$188.57 applicable interest, for a total abatement of \$1,256.13. Such abatement resulted from a recomputation of petitioner's allocation based on an allowance of 124 days worked without New York State and a reclassification of 19 days claimed as having been worked in Europe to "other non-working days". Accordingly, the remaining tax deficiency at issue herein is \$279.49.

4. During 1970, petitioner was an officer of Gould Paper Corporation in New York. Petitioner spent several days working in Europe during said year negotiating for, and organizing Computer Copies Corporation, a joint venture between Oce'-Van der Grinten N.V. in Milan, its subsidiary, Self Copy International in Venlo and Gould Paper Corporation. Additionally, petitioner spent days in Hamburg conducting business with Reinhold-Gould GMBH, a wholly owned subsidiary of Gould Paper Corporation.

5. Petitioner submitted documentation evidencing that he spent nineteen days during calendar year 1970 in Europe. Fifteen of the nineteen days were spent on business while the remaining four days were comprised of Saturdays and Sundays.

6. Petitioner submitted a breakdown of miscellaneous deductions claimed of \$2,739.41. Said sum was computed based on total expenses purportedly incurred of \$7,910.13 reduced by reimbursements of \$5,170.72. Nonreimbursed expenses were claimed to have been incurred with respect to petitioner's domestic sales activities with Gould Paper Corporation. No documentation was submitted to evidence that petitioner either incurred or paid nonreimbursed business expenses.

CONCLUSIONS OF LAW

A. That of a total of 246 days worked during 1970 by petitioner, 139 days were worked without New York State. Accordingly, petitioner is properly entitled to allocate his salary income as follows:

days worked in New York	107	x	\$25,500.00	=	\$11,091.46	(portion of salary
total working days	246					allocable to New York)

B. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he is properly entitled to miscellaneous deductions of \$2,739.41. Accordingly, said deductions are hereby denied.

C. That the petition of Peter J. Gould is granted to the extent provided in Conclusion of Law "A", supra, and that said petition is, in all other respects, denied.

D. That the Audit Division is hereby directed to modify the Notice of Deficiency dated March 25, 1974 to be consistent with the decision rendered herein.

DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER