

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Estate of Milton A. Klein

:

:

: 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 Years :
1975 & 1976.

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 17th day of July, 1981, he served the within notice of Decision by certified mail upon Estate of Milton A. Klein the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Milton A. Klein
c/o William Slivka
292 Madison Ave.
New York, NY 10017

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
17th day of July, 1981.

Connie A. Highland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Milton A. Klein :

: 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 Years :
1975 & 1976.

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 17th day of July, 1981, he served the within notice of Decision by certified mail upon William Slivka the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Slivka
Sherman, Feigen & Slivka
292 Mardison Ave.
New York, NY 10017

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
17th day of July, 1981.

Connie A. Haglund

J. Vredenburg

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

July 17, 1981

Estate of Milton A. Klein
c/o William Slivka
292 Madison Ave.
New York, NY 10017

Dear Mr. Klein:

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
William Slivka
Sherman, Feigen & Slivka
292 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ESTATE OF MILTON A. KLEIN	:	DECISION
	:	
for Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1975 and 1976.	:	

Petitioner, Estate of Milton A. Klein, c/o William Slivka, 292 Madison Avenue, New York, New York 10017, filed a petition for a redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1975 and 1976. (File Nos. 22479 & 26484).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 7, 1980 at 9:15 A.M. Petitioner appeared by William Slivka, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq., (Frank Levitt, Esq., of counsel).

ISSUE

Whether Milton A. Klein adequately substantiated his days worked outside of New York State as having been worked for the necessity of his employer rather than for his own personal convenience.

FINDINGS OF FACT

1. On April 4, 1978 and September 15, 1978 the Audit Division issued to Milton A. Klein notices of deficiency in the amounts of \$3,565.77 and \$1,025.71, plus interest, as additional income taxes due respectively for the tax years 1975 and 1976.

2. During the tax years in issue, Milton A. Klein was an employee of Milton A. Klein Company, Inc., 80-23 164th Street, Jamaica, New York 11432. The company did not have any other address, however, Mr. Klein's Florida home telephone number was stated on its stationery. The company was founded by Mr. Klein and his brother, Emanuel A. Klein.

3. During the tax years in issue, Milton A. Klein maintained two homes; one is Queens County, New York and the other at 2681 South Course Drive, Pompano Beach, Florida 33060. Both homes were maintained throughout the year.

4. According to the evidence submitted at the hearing, Mr. Klein performed services for the corporation during the years in issue from his Florida home during the period September to March and in New York from April to October.

5. The services performed by Mr. Klein in Florida were performed from his Florida home without the assistance of any clerical or administrative help because he did not want to be bothered.

6. Mr. Klein's personal representative was unable to furnish records indicating the exact nature of the work performed by Mr. Klein and the exact dates of when and where the work was performed.

7. Although Mr. Klein was suffering with skin cancer, probably caused by the sun, it was nevertheless believed that Florida was the best place for him, healthwise.

8. There is no evidence that the work performed in Florida over such a sustained period of time could not have been adequately performed in New York.

CONCLUSIONS OF LAW

A. That any allowance claimed for days worked outside 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).

B. That during the tax years in issue Milton A. Klein's employer did not maintain a bonafide place for the transaction of its business in the State of Florida.

C. That services performed by Mr. Klein from his home in Florida were performed for his personal convenience and not for the necessity of his employer.

D. That the petition herein is denied and the notices of deficiency dated April 4, 1978 and September 15, 1978 are sustained.

DATED: Albany, New York

JUL 17 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER