

STATE TAX COMMISSION

: AFFIDAVIT OF MAILING

:

Birth on said wrapper is the last known address

J. Medala

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jack & Mae S. Lee :

: 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 1973 - 1975 :

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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Lawrence Metzger 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. Lawrence Metzger
11 E. 44th St.
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
10th day of April, 1981.

Grace A. Hagelund

J. Vredenburg

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

April 10, 1981

Jack & Mae S. Lee
450 Ridge Rd.
Watchung, NJ 07060

Dear Mr. & Mrs. Lee:

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
Lawrence Metzger
11 E. 44th St.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JACK LEE and MAE S. LEE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1973, 1974 and 1975.	:	

Petitioners, Jack Lee and Mae S. Lee, his wife, 450 Ridge Road, Watchung, New Jersey 07060, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1973, 1974 and 1975 (File No. 18439).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 18, 1979 at 1:15 P.M. Petitioners appeared by Lawrence Metzger, CPA. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the performance of services by Jack Lee (hereinafter "petitioner") in New Jersey on behalf of Victor Novelty Co., Inc. was for the necessity of his employer or for his own convenience.

FINDINGS OF FACT

1. Petitioner and his wife, Mae S. Lee, are residents of New Jersey. They filed New York State Income Tax nonresident returns jointly in 1973, 1974 and 1975 in which petitioner reported income representing salary paid by Victor Novelty Co., Inc. ("Victor"), a New York corporation located at 39 Eldridge Street, New York City. Petitioner allocated said income purportedly

pursuant to 20 NYCRR 131.16 on the theory that approximately one day per week of petitioner's time was spent in New York and the balance in New Jersey.

2. By Notice of Deficiency dated April 11, 1977, the Department of Taxation and Finance ("Department") imposed additional tax and interest as follows:

	<u>Deficiency</u>	<u>Interest</u>	<u>Total</u>
1973	\$1,090.91	\$244.55	\$1,335.46
1974	2,939.50	496.98	3,436.48
1975	511.95	43.04	554.99
	<u>\$4,542.36</u>	<u>\$784.57</u>	<u>\$5,326.93</u>

A consent extending the period of limitation on assessment for 1972 was executed on November 30, 1976. The deficiency was predicated upon the Department's disallowance of petitioner's allocation of income to days worked without the State. The Department determined that all salary received from Victor was New York income since petitioner's presence in New Jersey was for his own convenience and was not required by his employment.

3. Petitioner is an officer (treasurer) and shareholder of Victor, which is engaged in the business of creating costume jewelry. Petitioner is also an officer (treasurer) and shareholder of Jade Isle Holding Corp. ("Holding") and Jade Isle, Inc. ("Jade"), New Jersey corporation involved in the ownership and operation of the Jade Isle Chinese Restaurant, located in New Jersey. Dunsen Joe, a New York resident, is the president and a stockholder of Victor, Holding and Jade.

4. Petitioner spent six days per week in New Jersey functioning as manager of the restaurant, and one day per week in New York conducting the business of Victor. While in New Jersey, petitioner contacted New Jersey customers and suppliers of Victor, primarily by telephone. These telephone calls could be made from the New York office of Victor.

CONCLUSIONS OF LAW

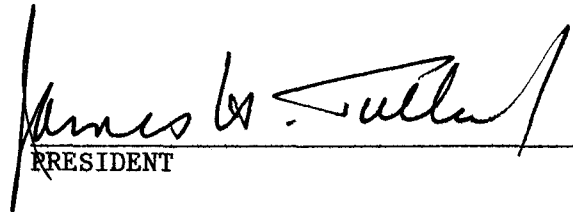
A. That petitioner's performance of services for Victor in New Jersey was for petitioner's own convenience so that petitioner could manage the restaurant. The performance of such services was not necessitated by petitioner's employment by Victor since telephone calls to Victor's customers and suppliers could have been made from New York. The extent of petitioner's personal visits to New Jersey suppliers and customers of Victor was not shown with sufficient particularity to justify allocation on that basis. (20 NYCRR 131.16).

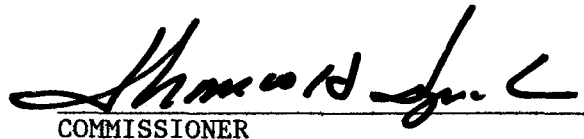
B. That the petition of Jack Lee and Mae S. Lee, his wife, is denied and the Notice of Deficiency is sustained.

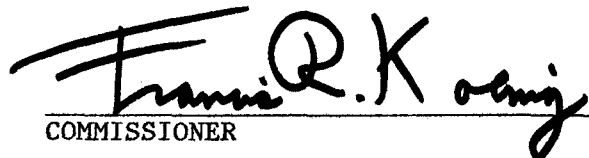
DATED: Albany, New York

APR 10 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER