

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Nicholas R. Mayer :
and Loretta Mayer, Executrix :
: 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 1972, 1973

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 Estate of Nicholas R. Mayer, and Loretta Mayer, Executrix, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Nicholas R. Mayer
and Loretta Mayer, Executrix
3250 Palm Aire Dr.
Pompano Beach, FL 33060

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
10th day of April, 1981.

Annie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Nicholas R. Mayer :
and Loretta Mayer, Executrix :
: 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 1972, 1973 :

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 Allan T. Cannon 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. Allan T. Cannon
665 Fifth Ave.
New York, NY 10022

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.

Annie A. Hagelund

J. Vredenburg

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

April 10, 1981

Estate of Nicholas R. Mayer
and Loretta Mayer, Executrix
3250 Palm Aire Dr.
Pompano Beach, FL 33060

Dear Ms. Mayer:

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
Allan T. Cannon
665 Fifth Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ESTATE OF NICHOLAS R. MAYER	:	DECISION
and LORETTA MAYER	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1972 and 1973.	:	

Petitioners, Estate of Nicholas R. Mayer and Loretta Mayer, 3250 Palm Aire Drive, Pompano Beach, Florida 33060, 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 1972 and 1973. (File No. 16816).

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 August 23, 1979 at 9:30 A.M. Petitioners appeared by Allan T. Cannon, Esq. The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether certain income earned by a non-resident is taxable as New York State income.

FINDINGS OF FACT

1. Nicholas R. Mayer died on February 3, 1973. Joint federal income tax returns were filed by Loretta W. Mayer on behalf of her deceased husband and herself for the years 1972 and 1973. The address used on the return was in Pompano Beach, Florida. No New York State return was filed for said year.

2. By a Notice of Deficiency issued July 26, 1976, the Audit Division asserted the following deficiencies against petitioners:

	<u>DEFICIENCY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1972	\$4,083.67	\$1,004.42	\$5,088.09
1973	11.17	1.91	13.08
	<u>\$4,094.84</u>	<u>\$1,006.33</u>	<u>\$5,101.17</u>

The deficiencies were based on the assertion that wages received by Nicholas R. Mayer from Raleigh Athletic Equipment Corporation ("Raleigh") were the continuation of compensation for services performed in New York State.

3. Nicholas R. and Loretta Mayer for the years in question (1972 and 1973) were residents and domiciliaries of the State of Florida.

4. In May of 1968, Nicholas Mayer suffered a massive stroke as a result of which his locomotion and his general health were impaired so that he could no longer remain a New York resident. For the years in question, Mr. Mayer's residence in the warm climate was a matter of medical necessity.

5. During the years at issue, Mr. Mayer owned 50 percent of the stock of Raleigh Athletic Equipment Corporation ("Raleigh") a New York corporation, with his brother Ferdinand Mayer owning the remaining 50 percent stock interest.

6. During 1972, Nicholas R. Mayer spent approximately two months in New York State transacting business and the remaining ten months without the State.

7. During 1973, Nicholas R. Mayer was not present at all in New York State.

8. During the years at issue Nicholas R. Mayer was paid compensation by Raleigh in accordance with the terms of an employment contract dated December 1, 1969.

9. During the years at issue Nicholas R. Mayer's compensation from Raleigh was paid in exchange for his rendering valuable and compensable services

in the nature of administrative, sales, legal, financial and accounting functions from his Florida home.

10. During the years at issue Raleigh had no other salesmen in Florida, had no other employees in Florida and maintained no office in Florida.

CONCLUSIONS OF LAW

A. That Nicholas R. Mayer's performance of services in Florida during 1972 was required by reason of his physical condition and therefore suited the employee's necessity, not the necessity of the employer. Accordingly, such work days must be held to be days worked within the State. (20 NYCRR 131.16; Matter of Churchill v. Gallman, 38 A.D.2d 631; Matter of Chomyn v. Tully, 65 A.D.2d 889.)

B. That Nicholas R. Mayer performed no services in New York during 1973 and accordingly, had no New York taxable income in 1973. (Matter of Linsley v. Gallman, 38 A.D.2d 367, aff'd. 33 N.Y.2d 863).

C. The Notice of Deficiency is modified to the extent indicated in Conclusion of Law "B" and is otherwise sustained.

D. The petition of the Estate of Nicholas R. Mayer and Loretta Mayer is granted to the extent indicated in Conclusion of Law "B" and is otherwise denied.

DATED: Albany, New York

APR 10 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER