

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

James K. & Margaret D. McManus :

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 James K. & Margaret D. McManus, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James K. & Margaret D. McManus
41 Compo Pky.
Westport, CT 06880

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.

Cornelia A. Hageland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

James K. & Margaret D. McManus :

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 Theodore W. Adler 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. Theodore W. Adler
270 Madison Ave.
New York, NY 10016

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
20th day of February, 1981.

Gennie P. Haglund

J. Vredenburg

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

February 20, 1981

James K. & Margaret D. McManus
41 Compo Pky.
Westport, CT 06880

Dear Mr. & Mrs. McManus:

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
Theodore W. Adler
270 Madison Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JAMES K. McMANUS and MARGARET D. McMANUS : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the year 1970 :

Petitioners, James K. McManus and Margaret D. McManus, 41 Compo Parkway, Westport, Connecticut 06880, 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 1970 (File No. 14232).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on August 1, 1978 at 9:45 A.M. Petitioners appeared by Wolf, Haldenstein, Adler, Freeman & Herz, Esqs., (Charles H. Baller, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUE

Whether petitioners are entitled to allocate income outside of New York State.

FINDINGS OF FACT

1. Petitioners, James K. McManus and Margaret D. McManus, residents of Connecticut, filed a joint New York State Income Tax Nonresident Return for 1970, on which they allocated 10/275ths of petitioner James K. McManus' income from ABC Sports, Inc. to New York State. The allocation was based on a total number of days claimed to have been worked in New York (10) over the claimed number of days worked in the year (275).

2. On December 1, 1972, the Income Tax Bureau issued a Statement of Audit Changes to petitioners disallowing the claimed allocation because petitioners failed to submit information requested in a letter sent to petitioners by the Bureau on August 23, 1972. On December 28, 1973, petitioners executed a form extending the period of limitation upon assessment of personal income tax to April 15, 1975. On May 20, 1974 the Bureau issued to petitioners a Notice of Deficiency in the amount of \$13,707.50, plus interest, based on the Statement of Audit Changes.

3. Petitioner James K. McManus is a sports commentator and announcer known professionally as "Jim McKay". During the year at issue, Mr. McManus was under exclusive contract to ABC Sports, Inc., a subsidiary of the American Broadcasting Company. His status as a contract employee was somewhat different from that of staff employees of ABC Sports, Inc. or the American Broadcasting Company. For example, although social security and income taxes were withheld from Mr. McManus' compensation, he was not a member of a pension plan.

Mr. McManus' basic job was to act as host of the weekly program "ABC's Wide World of Sports". He also was assigned to other events such as golf tournaments and automobile races which were not part of that series.

Although the contract established a specific amount of compensation on an annual basis, Mr. McManus' salary was directly related to the number of performances of Wide World of Sports programs televised. For example, if the telecast of a program were to be prevented or omitted because of a casualty, strike, failure of technical facilities, act of God, etc., his salary was to be reduced by 1/52nd for each program omitted. Likewise, a somewhat similar reduction would take effect in the event of termination of the Wide World of Sports series by the American Broadcasting Company.

CONCLUSIONS OF LAW

A. That section 632 of the Tax Law provides, in part, as follows:

"(a) General. The New York adjusted gross income of a nonresident individual shall be the sum of the following:

- (1) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with New York sources, including:

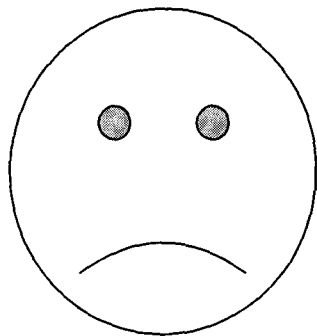
- (c) Income and deductions partly from New York sources. If a business, trade, profession or occupation is carried on partly within and partly without this state, as determined under regulations of the tax commission, the items of income, gain, loss and deduction derived from or connected with New York sources shall be determined by apportionment and allocation under such regulations."

B. That 20 NYCRR 131.16 provides, in part, as follows:

"Earnings of nonresident employees and officers.

If a nonresident employee...performs services for his employer both within or without the state, his income derived from New York sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within the state bears to the total number of working days employed both within and without the state...However, any allowance claimed for days worked outside of 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. In making the allocation provided for in this section, no account is taken of nonworking days, including Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation, or leave with or without pay."

CORRECTION FOLLOWS



2. On December 1, 1972, the Income Tax Bureau issued a Statement of Audit Changes to petitioners disallowing the claimed allocation because petitioners failed to submit information requested in a letter sent to petitioners by the Bureau on August 23, 1972. On December 28, 1973, petitioners executed a form extending the period of limitation upon assessment of personal income tax to April 15, 1975. On May 20, 1974 the Bureau issued to petitioners a Notice of Deficiency in the amount of \$13,707.50, plus interest, based on the Statement of Audit Changes.

3. Petitioner James K. McManus is a sports commentator and announcer known professionally as "Jim McKay". During the year at issue, Mr. McManus was under exclusive contract to ABC Sports, Inc., a subsidiary of the American Broadcasting Company. His status as a contract employee was somewhat different from that of staff employees of ABC Sports, Inc. or the American Broadcasting Company. For example, although social security and income taxes were withheld from Mr. McManus' compensation, he was not a member of a pension plan.

Mr. McManus' basic job was to act as host of the weekly program "ABC's Wide World of Sports". He also was assigned to other events such as golf tournaments and automobile races which were not part of that series.

Although the contract established a specific amount of compensation on an annual basis, Mr. McManus' salary was directly related to the number of performances of Wide World of Sports programs televised. For example, if the telecast of a program were to be prevented or omitted because of a casualty, strike, failure of technical facilities, act of God, etc., his salary was to be reduced by 1/52nd for each program omitted. Likewise, a somewhat similar reduction would take effect in the event of termination of the Wide World of Sports series by the American Broadcasting Company.

4. Each month, Mr. McManus would receive in the mail, at his home, a copy of a production schedule which was issued to the various commentators, producers and directors involved. The schedule showed dates and locations of events and the respective assignments. Although some of the events were broadcast after being recorded on video tape, rather than live, Mr. McManus' reporting was done live at the scene of each sporting event.

5. Mr. McManus covered only one event which took place in New York State in 1970, the Westchester Golf Classic. All other events took place outside of New York State and many took place outside of the United States.

Mr. McManus spent 58 days working at the events on location outside of New York State and an additional 72 days either traveling or in production meetings at the location of the event to be televised. Mr. McManus worked ten days in New York State in 1970: three days with the Westchester Golf Classic (two of which involved the actual televising of the event) and five days of studio work in New York City plus two days of meetings in New York City.

Most of the events took place on weekends. Mr. McManus would typically leave his home for the events toward the latter part of the week, after allowing enough time to meet with the production personnel before the event. He would return home late Sunday or on Monday and his days off were generally in the middle of the week.

6. Before he left for an event, Mr. McManus would spend some time at an office in his home developing background material for the event he was to cover that week. He used his own personal files, his library and periodicals. He would often take some of this material with him on his trips. Once he finished his job on location, his duties were essentially complete.

7. Mr. McManus did not have an office or desk space at the offices of ABC Sports, Inc., in New York City. He was given no secretarial or any other personnel for his assistance. He did not come into New York City except for the above mentioned five days of studio work and two days of meetings during 1970. On about six to eight occasions during 1970, ABC Sports, Inc. sent an audio crew to petitioners' home in Connecticut to tape Mr. McManus' voice introducing certain commercials which would be used on the air. The taping sessions would take approximately one half hour each. ABC Sports, Inc. did not require Mr. McManus to come into its New York City studios to do the taping, because, with his heavy travel schedule, management did not believe it would be fair to require him to make a round trip to New York City for a few minutes taping.

Mr. McManus also answered his fan mail and made and received telephone calls which were connected with his duties for ABC Sports, Inc. at his Connecticut home. In all, Mr. McManus worked 74 days on ABC Sports, Inc. matters at his home in Connecticut. Only one of these days related to an event which was held in New York State (the Westchester Golf Classic).

8. None of the other ABC Sports, Inc. contract announcers were provided with offices. Some contract announcers resided in places such as California, Indiana, and Michigan and would travel to their assigned events from their homes as Mr. McManus did.

9. Mr. McManus spent 61 days working at his home on matters not related to ABC Sports, Inc.; for instance he worked on a book, which was later published and he managed four Connecticut real estate investment properties.

CONCLUSIONS OF LAW

A. That section 632 of the Tax Law provides, in part, as follows:

"(a) General. The New York adjusted gross income of a nonresident individual shall be the sum of the following:

- (1) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with New York sources, including:

- (c) Income and deductions partly from New York sources. If a business, trade, profession or occupation is carried on partly within and partly without this state, as determined under regulations of the tax commission, the items of income, gain, loss and deduction derived from or connected with New York sources shall be determined by apportionment and allocation under such regulations."

B. That 20 NYCRR 131.16 provides, in part, as follows:

"Earnings of nonresident employees and officers.

If a nonresident employee...performs services for his employer both within or without the state, his income derived from New York sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within the state bears to the total number of working days employed both within and without the state...However, any allowance claimed for days worked outside of 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. In making the allocation provided for in this section, no account is taken of nonworking days, including Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation, or leave with or without pay."

C. That the 74 days worked at home in Connecticut by petitioner James K. McManus for ABC Sports Inc., during 1970 were worked there by reason of his necessity and convenience and not for the convenience of his employer and, therefore, said days cannot be considered to be days worked outside New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16 (George A. and Katherine Summerall, State Tax Commission, January 31, 1974.)

D. That the 61 days worked at home on matters not related to ABC Sports, Inc. were days worked for personal business and not related to his salary from ABC Sports, Inc. In determining the allocation no account is taken of these days as they are nonworking days within the meaning and intent of 20 NYCRR 131.16.

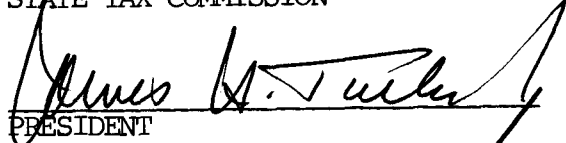
E. That the Audit Division is directed to allocate petitioner James K. McManus' salary on the fraction of 84 days worked in New York State as the numerator and 214 days worked in the year as the denominator.

F. That the petition of James K. McManus and Margaret D. McManus is granted to the extent indicated in Conclusion of Law "E" supra and except as so granted the Notice of Deficiency is otherwise sustained.

DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER