

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert & Dorothy Natko :

: 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 - 1974.

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Robert & Dorothy Natko, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert & Dorothy Natko
143 Washington Ave.
W. Caldwell, NJ

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
14th day of August, 1981.

Genie A. Hagelund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert & Dorothy Natko :
: 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 - 1974. :

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Lawrence M. Koenig the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence M. Koenig
1061 Bloomfield Ave.
West Caldwell, NJ 07006

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
14th day of August, 1981.

Carrie A. Hagelund

J. Vredenburg

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

August 14, 1981

Robert & Dorothy Natko
143 Washington Ave.
W. Caldwell, NJ

Dear Mr. & Mrs. Natko:

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 M. Koenig
1061 Bloomfield Ave.
West Caldwell, NJ 07006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ROBERT NATKO and DOROTHY NATKO
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1972 through 1974.

DECISION

Petitioners, Robert Natko and Dorothy Natko, 143 Washington Avenue, West Caldwell, New Jersey 07006, 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, 1973 and 1974 (File No. 15638).

Formal hearings were held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 2, 1977 and July 14, 1978, and before James T. Prendergast, Hearing Officer, on March 22, 1979. Petitioners appeared pro se on December 2, 1977, and by Lawrence M. Koenig, Esq. on July 14, 1978 and March 22, 1979. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel on December 2, 1977 and July 14, 1978, and William Fox, Esq., of counsel on March 22, 1979).

ISSUE

Whether income taxes withheld from petitioner Robert Natko's income by his employer and remitted to the State of New Jersey may be credited against petitioners' New York State personal income tax.

FINDINGS OF FACT

1. Petitioners, Robert and Dorothy Natko, timely filed New York State nonresident income tax returns for 1972, 1973 and 1974. Petitioners are residents of the State of New Jersey.

2. On April 12, 1976, the Audit Division issued a Notice of Deficiency and a Statement of Audit Changes against petitioners for 1972, 1973 and 1974, for income taxes due of \$7,394.74, plus \$1,005.43 in interest, less an overpayment on petitioners' 1974 return of \$179.00, for a total of \$8,221.17.

The explanation on the Statement of Audit Changes stated that:

"Since you failed to submit a list of days worked outside New York for 1972 and 1974, all wages for those years are considered taxable to New York. The wage allocation for 1973 has been adjusted, based upon information submitted, neither the wage statements submitted nor our records show New York State tax withheld by Coit International for 1972, 1973 or 1974."

3. Petitioners subsequently filed a timely petition for revision of these deficiencies.

4. On May 10, 1977, the Audit Division recomputed petitioner Robert Natko's New York income based on additional information submitted. Said recomputation for 1972, 1973 and 1974 resulted in personal income tax due of \$3,588.06, plus interest of \$843.69, for a total due of \$4,431.75. Petitioner Robert Natko and the Audit Division agree to the recomputation of the tax. The remaining issue is whether petitioners should be allowed a credit for New Jersey tax withheld against the total tax due.

5. During 1972, 1973 and 1974, petitioner Robert Natko's employer (Coit International, Inc. located in Dallas, Texas) withheld state income taxes from his income. The wage and tax statements issued to Mr. Natko by his employer for the years at issue indicated for 1972 and 1973 under section "Name of State" New Jersey and for 1974 under "State or Locality" NJ.

6. During the years at issue, New Jersey had a personal income tax known as New Jersey Emergency Transportation Tax which provided for the withholding of taxes. Any individual having gross income from a "source state" in excess of the sum of his personal exemptions was required to file a New Jersey Emergency

Transportation Tax Return. However, New Jersey residents were not required to file. The Division of Taxation in New Jersey had promulgated a regulation relieving them of the requirement of filing a return since the income imposed by New York offsets the New Jersey tax. Thus, only New York residents with income from New Jersey sources were required to file returns.

7. Petitioner Robert Natko contends that his employer mistakenly remitted New York State taxes withheld to the State of New Jersey. However, no evidence was submitted to show his employer withheld New York State taxes from his income and the wage and tax statements clearly show that New Jersey State taxes were withheld.

CONCLUSIONS OF LAW

A. That income tax deducted and withheld from wages in any calendar year are to be credited against the personal income tax of the person from whose wages the tax was withheld, even though such tax is not paid over to the State Tax Commission by the employer (section 673 of the Tax Law; 20 NYCRR 160.21).

B. That within the meaning and intent of section 673 of the Tax Law and 20 NYCRR 160.21, credit for taxes withheld refers to taxes withheld for the benefit of New York. No evidence was submitted to indicate any taxes were withheld for the benefit of New York. Thus, taxes remitted to the State of New Jersey cannot be claimed as credit against petitioners' New York State personal income tax.

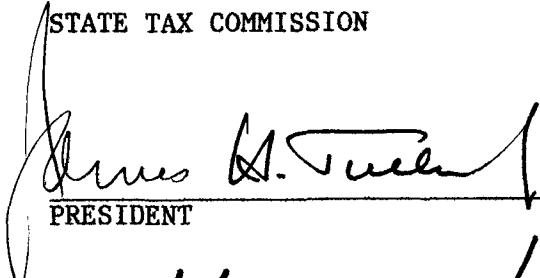
C. That the petition of Robert Natko and Dorothy Natko is granted to the extent indicated in Finding of Fact "4", supra, but in all other respects denied. The Audit Division is directed to modify the Notice of Deficiency dated April 12, 1976 in accordance with Finding of Fact "4", supra, and such

modified Notice of Deficiency is sustained, together with such additional interest as may be lawfully due.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION



James H. Tuel

PRESIDENT



Thomas H. Hyn

COMMISSIONER



Francis R. Koenig

COMMISSIONER

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

August 14, 1981

Robert & Dorothy Natko
143 Washington Ave.
W. Caldwell, NJ

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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 M. Koenig
1061 Bloomfield Ave.
West Caldwell, NJ 07006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ROBERT NATKO and DOROTHY NATKO
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
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CONCLUSIONS OF LAW

A. That income tax deducted and withheld from wages in any calendar year are to be credited against the personal income tax of the person from whose wages the tax was withheld, even though such tax is not paid over to the State Tax Commission by the employer (section 673 of the Tax Law; 20 NYCRR 160.21).

B. That within the meaning and intent of section 673 of the Tax Law and 20 NYCRR 160.21, credit for taxes withheld refers to taxes withheld for the benefit of New York. No evidence was submitted to indicate any taxes were withheld for the benefit of New York. Thus, taxes remitted to the State of New Jersey cannot be claimed as credit against petitioners' New York State personal income tax.

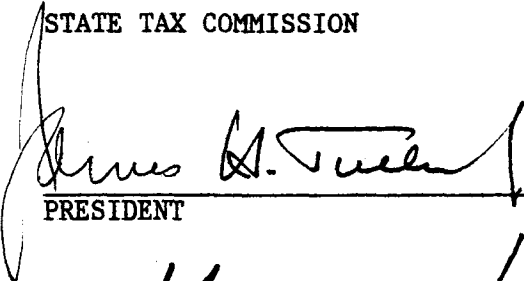
C. That the petition of Robert Natko and Dorothy Natko is granted to the extent indicated in Finding of Fact "4", supra, but in all other respects denied. The Audit Division is directed to modify the Notice of Deficiency dated April 12, 1976 in accordance with Finding of Fact "4", supra, and such

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DATED: Albany, New York

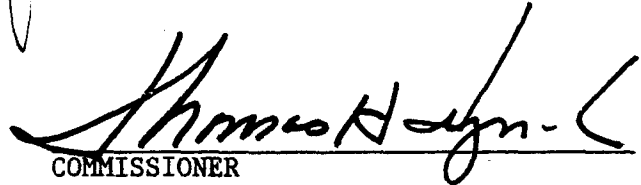
AUG 14 1981

STATE TAX COMMISSION



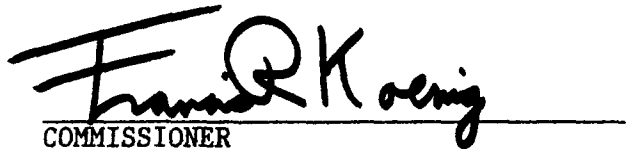
James H. Tuck

PRESIDENT



Thomas H. Hyn

COMMISSIONER



Francis R. Koenig

COMMISSIONER

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STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

NOT DELIVERABLE AS ADDRESSED
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TO SENDER

REP.
Copy.

TAX APPEALS BUREAU
SEP 8 1981
RECEIVED

Lawrence M. Koenig
1061 Bloomfield Ave.
West Caldwell, NJ 07006

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MAIL