

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Harris B. & Charlotte Peck :

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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Harris B. & Charlotte Peck, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harris B. & Charlotte Peck
150 Overlook Circle
New Rochelle, NY 10804

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
5th day of February, 1981.

Carrie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Harris B. & Charlotte Peck :

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. :

AFFIDAVIT OF MAILING

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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Jacob Friedberg 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. Jacob Friedberg
175 Fifth Ave., Suite 700
New York, NY 10010

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
5th day of February, 1981.

Cherie P. Hagelund

Jay Vredenburg

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

February 5, 1981

Harris B. & Charlotte Peck
150 Overlook Circle
New Rochelle, NY 10804

Dear Mr. & Mrs. Peck:

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
Jacob Friedberg
175 Fifth Ave., Suite 700
New York, NY 10010
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HARRIS B. PECK and CHARLOTTE PECK	:	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, Harris B. Peck and Charlotte Peck, 150 Overlook Circle, New Rochelle, New York 10804, 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. 15734).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 15, 1980 at 10:45 A.M. Petitioners appeared by Jacob Friedberg, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether sabbatical leave earnings received by nonresident petitioner Harris B. Peck from his New York employer, Yeshiva University, may properly be allocated to sources without New York State.

FINDINGS OF FACT

1. Petitioners, Harris B. Peck and Charlotte Peck, filed a joint New York State Income Tax Nonresident Return for the year 1970, wherein Harris B. Peck (hereinafter petitioner) allocated sabbatical leave earnings, from his New York State employer, Yeshiva University, to sources without the State of New York.

2. On October 9, 1973, the Audit Division issued a Statement of Audit Changes to petitioners wherein petitioner's claimed allocation was "disallowed as unsubstantiated". Accordingly, a Notice of Deficiency was issued against petitioners on November 25, 1974 asserting personal income tax of \$783.79, plus interest of \$169.80, for a total due of \$953.59. Said Notice of Deficiency was timely issued since on January 24, 1974 petitioners submitted a valid Consent Fixing Period of Limitation Upon Assessment of Personal Income Tax to April 15, 1975.

3. On April 24, 1969, petitioner, an Associate Professor of Psychiatry and Director of Mental Health Services at the Albert Einstein College of Medicine of Yeshiva University, requested a sabbatical leave from said institution for the period September 1, 1969 through August 31, 1970. He was granted the sabbatical leave as requested, plus an additional year of leave without pay which comprised the balance of his absence period of July 1, 1969 to June 30, 1971.

4. On petitioner's application for sabbatical leave he listed his intended purpose for such leave in part as "studying and assisting in the development of programs related to community health and development primarily at U.C.L.A. under sponsorship of School of Public Health Department of Psychiatry College of Medicine". His selection of Southern California and the U.C.L.A. School of Public Health were due to the uniqueness of said area for fulfilling his professional objectives.

5. During the period of petitioner's leave he served on the faculty of the School of Public Health of UCLA in Los Angeles and the Charles R. Drew Postgraduate Medical School, also in Los Angeles. He received compensation for his services to said institutions of \$18,121.46 and \$8,165.50, respectively. No days were spent by petitioner in New York during the year at issue.

6. During the year 1970, petitioner received \$21,312.00 from the Albert Einstein College of Medicine. A portion of said sum was paid for services rendered in 1969, while the balance was for sabbatical leave paid at the rate of half the annual salary.

7. Petitioner contended that he is entitled to allocate his sabbatical leave compensation since the services he rendered during such period were ultimately of substantial benefit to his New York employer and such services could not have been duplicated in New York State. He further contended that in the event that the Audit Division's position "that the sabbatical leave compensation represented payment for prior years services" proves to be correct, he would then be entitled to an allocation based on allocations claimed in previous years. Although petitioner was given the opportunity to submit copies of his returns for the three years prior to the year at issue, he failed to do so.

CONCLUSIONS OF LAW

A. That 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 (20 NYCRR 131.16).

Since the services rendered by petitioner to California institutions during 1970 while he was on a sabbatical leave, were not rendered for his New York employer, the compensation derived from such New York employer may not be allocated to sources without New York State. The fact that petitioner's California services may have been of some benefit to the Albert Einstein College of Medicine does not constitute a justifiable basis for such allocation. Further, since petitioner has not sustained his burden of proof required

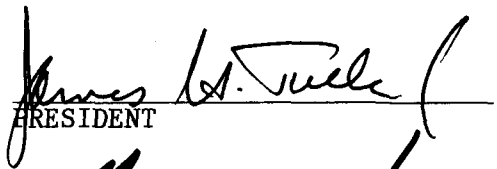
pursuant to section 689(e) of the Tax Law to show that he is entitled to an allocation based on prior years, no allocation is deemed appropriate.

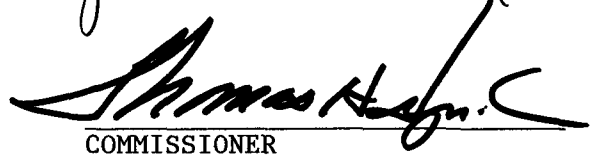
B. That the petition of Harris B. Peck and Charlotte Peck is denied and the Notice of Deficiency dated November 25, 1974 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 05 1981


PRESIDENT


COMMISSIONER


COMMISSIONER