

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul R. & Gail Pops :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Years 1975 - 1977.

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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Paul R. & Gail Pops, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul R. & Gail Pops
11 McCain Ct.
Closter, NJ 07624

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
25th day of September, 1981.

Connie P. Haglund

J. Vredenburg

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

September 25, 1981

Paul R. & Gail Pops
11 McCain Ct.
Closter, NJ 07624

Dear Mr. & Mrs. Pops:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PAUL R. POPS and GAIL POPS : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1975, 1976 and :
1977 and Article 30 of the Tax Law for the :
Years 1976 and 1977. :
:

Petitioners, Paul R. Pops and Gail Pops, 11 McCain Court, Closter, New Jersey 07624, 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 1975, 1976 and 1977, and Article 30 of the Tax Law for the years 1976 and 1977 (File No. 25956).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 22, 1981 at 9:15 A.M. Petitioner, Paul R. Pops appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether days worked at home by petitioner, Paul R. Pops, during the years 1975, 1976 and 1977 can be considered days worked without New York State for income allocation purposes.

FINDINGS OF FACT

1. On February 5, 1979, the Audit Division issued a Statement of Audit Changes against Paul R. Pops and Gail Pops for the years 1975, 1976 and 1977 in which their taxable income for said years had been recomputed on the grounds

that days worked at home did not form a proper basis for allocation of income by a nonresident. Accordingly, a Notice of Deficiency was issued on February 23, 1979 in the amount of \$6,798.13.

2. Petitioners, residents of New Jersey, filed New York State income tax nonresident returns for the years 1975, 1976 and 1977, wherein Paul R. Pops allocated income received from a professional corporation, Pops & Estrin, P.C., 225 Broadway, New York, New York for days worked at his home in New Jersey. Paul R. Pops is an attorney with an extensive practice in the field of negligence. He practices from the office of the professional corporation in New York. This practice required him to work long hours contacting clients, doctors, witnesses, and insurance carriers. He took his work home to New Jersey at night and on weekends, where he would communicate with clients, dictate on his tape recorder and review files preparatory to depositions and trials. He did his own trial and preparatory work. Petitioner had a dark room for the development of negatives necessary for his legal work. He is also a certified public accountant.

CONCLUSIONS OF LAW

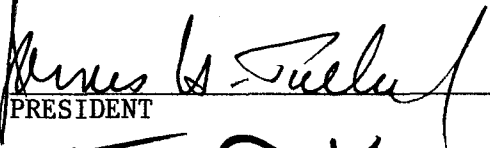
A. That the days on which petitioner Paul R. Pops worked at his home in New Jersey during the years 1975, 1976 and 1977 were worked there by reason of his convenience and not for the necessity of his employer. Therefore, said days constituted days worked within New York State in accordance with the meaning and intent of section 632(c) of Article 22 of the Tax Law and 20 NYCRR 131.16 (See, Matter of Speno v. Gallman, 35 N.Y.2d 256) and section 1312 of Article 30 of the Tax Law for the years 1976 and 1977.

B. That the petition of Paul R. Pops and Gail Pops is denied and the Notice of Deficiency issued on February 23, 1979 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER