

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Estate of Victor DeRose
Jean DeRose, 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 Year :
1975.

State of New York
County of Albany


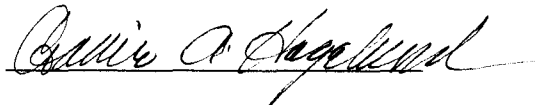
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of November, 1982, he served the within notice of Decision by certified mail upon Estate of Victor DeRose, Jean DeRose, Executrix the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Victor DeRose
Jean DeRose, Executrix
119 Woodland St.
Tenafly, NJ 07067

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
12th day of November, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Estate of Victor DeRose :
Jean DeRose, Executrix :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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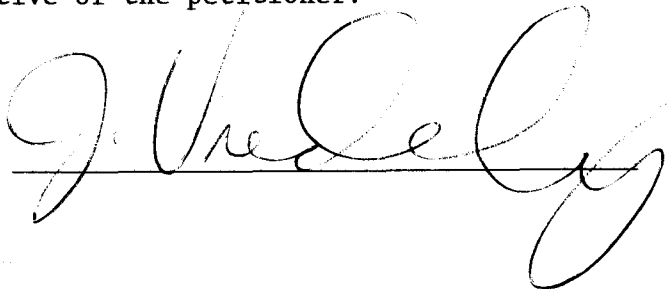
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of November, 1982, he served the within notice of Decision by certified mail upon F. R. Goglio the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

F. R. Goglio
Frederick & Goglio
167 Willis Ave.
Mineola, NY 11501

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
12th day of November, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

November 12, 1981

Estate of Victor DeRose
Jean DeRose, Executrix
119 Woodland St.
Tenafly, NJ 07067

Dear Mrs. DeRose:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
F. R. Goglio
Frederick & Goglio
167 Willis Ave.
Mineola, NY 11501
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ESTATE OF VICTOR DEROSE	:	DECISION
JEAN DEROSE, EXECUTRIX	:	
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1975.	:	

Petitioner, Estate of Victor DeRose, Jean DeRose, Executrix, 119 Woodland Street, Tenafly, New Jersey 07670, 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 1975 (File No. 29047).

On January 12, 1982, petitioner advised the State Tax Commission, in writing, that it desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether Victor DeRose, the decedent herein, was properly entitled to allocate a portion of his salary income to sources without New York State for tax year 1975.

FINDINGS OF FACT

1. Victor DeRose (deceased June 22, 1975) and his wife, Jean DeRose, timely filed a nonresident New York State Combined Income Tax Return for the year 1975 whereon Victor DeRose (hereinafter decedent) allocated his salary income derived from his New York employer, Hinkhouse, Inc., to sources within

and without the State of New York. Pursuant to an allocation schedule attached to said return, decedent claimed 79 total working days in 1975 of which 43 were claimed to have been worked within New York and 36 were claimed to have been worked without New York.

2. On May 4, 1978 the Audit Division issued a Statement of Audit Changes to the Estate of Victor DeRose, Jean DeRose, Executrix (hereinafter petitioner), wherein decedent's claimed allocation was disallowed in its entirety based on a letter from petitioner's attorneys which stated that "during 1975 when Mr. DeRose was not working in New York, he spent his time at his home". Since pursuant to said Statement of Audit Changes "Days worked at home do not form a proper basis for allocation of income by a nonresident", said adjustment was made. Accordingly, a Notice of Deficiency was issued against petitioner on November 12, 1979 asserting additional personal income tax of \$1,404.33, plus interest of \$426.77, for a total due of \$1,831.10. Said notice was timely issued since on December 19, 1978 petitioner executed a Consent Fixing Period of Limitation Upon Assessment of Personal Income Tax for 1975, which extended the period of assessment to April 15, 1980.

3. Based on a recomputation of tax prepared by the Audit Division's advocate at a pre-hearing conference held by the Tax Appeals Bureau, the tax deficiency at issue herein was reduced to \$777.87. Said recomputation correctly reduced decedent's total New York income from \$57,446.50, as erroneously stated on the Statement of Audit Changes, to \$52,500.00. However, an error was made in such recomputation with respect to computation of the limitation percentage. Only the decedent's total New York income was used for the numerator whereas properly computed, the numerator should be comprised of the total New York income of both the decedent and his wife. A revised recomputation incorporating said correction yields a tax deficiency of \$643.81.

4. The record contains three letters sent by petitioner's representative in 1976 in response to inquiry letters issued by the Audit Division. The content of such letters indicate that the decedent worked each Thursday in his New York office with the balance of his work time being spent at his New Jersey home. Additionally, a schedule submitted, which was prepared from information furnished by the decedent's wife, allocates days worked to either the "worked at home in New Jersey" column or the "worked in New York" column. Days claimed for category pursuant to said schedule were 52 and 27 respectively.

5. Jean DeRose, decedents wife and executrix of the petitioner's estate herein, submitted an affidavit dated January 10, 1982, wherein she stated that:

- (a) Up until shortly before his death, decedent remained active in his firm's affairs and serviced customers such as Coty, Warner Lambert, Grolier, Revlon and Burlington Mills in their offices outside of the State of New York.
- (b) That the schedule submitted erroneously included in a caption entitled "Worked At Home In New Jersey" both days worked at home and days spent servicing the customers outside the State of New York.
- (c) That decedent spent at least 4 days a month, or approximately twenty working days during the period January 1, 1975 through May 25, 1975 attending to duties outside of New York State, and also spent at least 32 days during such period running the corporate affairs from his home.

6. No timely kept documentary evidence was submitted which would establish the number of days the decedent worked without New York State at locations other than his home.

CONCLUSIONS OF LAW

A. That any allowance claimed for days worked outside of New York 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) Accordingly, those days worked by decedent at home do not constitute days worked without New York State.

B. That petitioner has failed to sustain its burden of proof required pursuant to section 689(e) of the Tax Law to show the number of days, if any, which decedent worked without New York State at a location other than his home.

C. That decedent was not properly entitled to allocate a portion of his salary income to sources without New York State for taxable year 1975 within the meaning and intent of section 632(c) of the Tax Law.

D. That the "recomputation of tax" reducing the tax deficiency herein to \$777.87 is adjusted to further reduce said deficiency to the properly computed amount of \$643.81. (Finding of Fact "3" supra)

E. That the petition of the Estate of Victor DeRose, Jean DeRose, Executrix is granted to the extent provided in Conclusion of Law "D" supra, and except as so granted, said petition is, in all other respects, denied.

F. That the Audit Division is hereby directed to adjust the Notice of Deficiency dated November 12, 1979 to be consistent with the decision rendered herein.

DATED: Albany, New York

NOV 12 1982

STATE TAX COMMISSION

Acting

PRESIDENT


COMMISSIONER


COMMISSIONER