

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Robert & Josephine Ernst :

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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon Robert & Josephine Ernst, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert & Josephine Ernst  
57 Thorn Ridge Dr.  
Stamford, CT 06903

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  
3rd day of January, 1983.

Kathy Pfaffenbach

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Robert & Josephine Ernst :  
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. :  
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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon Mark S. Gross the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mark S. Gross  
360 North St.  
White Plains, NY 10605

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  
3rd day of January, 1983.

Kathy Hoppach

J. Vredenburg

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

January 3, 1983

Robert & Josephine Ernst  
57 Thorn Ridge Dr.  
Stamford, CT 06903

Dear Mr. Ernst:

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  
Mark S. Gross  
360 North St.  
White Plains, NY 10605  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition  
of  
ROBERT ERNST and JOSEPHINE ERNST  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Year 1975.

---

DECISION

Petitioners, Robert Ernst and Josephine Ernst, 57 Thorn Ridge Drive, Stamford, Connecticut 06903, 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. 28647).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 17, 1981 at 10:45 A.M. Petitioners appeared with Mark S. Gross, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner Robert Ernst, a nonresident, is entitled to allocate part of his earnings to sources without New York State.

FINDINGS OF FACT

1. Petitioners, Robert Ernst and Josephine Ernst, his wife, filed a joint New York State Income Tax Nonresident Return for 1975. On said return, petitioner Robert Ernst's income from Scott Steel Fabricators, Inc., was allocated to New York State on the basis of days worked within and without the State.

2. On August 10, 1978, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$1,419.20, plus interest

of \$279.33, for a total of \$1,699.13. The Notice of Deficiency was based on a Statement of Audit Changes, issued under date of May 16, 1978, which disallowed petitioner's claimed allocation of wages on the ground that petitioner Robert Ernst did not work outside of New York State for the subject year. As a corollary, petitioner's deductions, including contributions to his Individual Retirement Account ("IRA") were also recomputed to conform to the allocation formula applied to his earnings. There was no separate disallowance of contributions made to the IRA by the Audit Division.

3. During the year at issue petitioners were residents of the State of Connecticut. Petitioner Robert Ernst was employed as a salesman and general manager by Scott Steel Fabricators, Inc. (hereinafter "corporation") at its office and factory located in New York State. On July 1, 1975, the corporation terminated operations at its New York factory as a result of an industry-wide strike by Shopmen's Local Union No. 455. The strike continued into 1976.

In anticipation of the strike, petitioner removed files and drawings related to pending contracts from the corporation's New York office. The work related to pending contracts was completed at plants, unrelated to the corporation, located in Stamford, Connecticut and Chicopeefalls, Massachusetts, under the supervision of petitioner Robert Ernst who continued to receive his salary from the corporation.

4. The work done by petitioner on pending contracts could not be done at his employer's New York factory because of the industry wide strike.

#### CONCLUSIONS OF LAW

A. That petitioner, Robert Ernst, performed services for his employer within and without New York State for subject year. That, for the period January 1, 1975 to June 30, 1975, petitioner's income was derived from or

connected with New York State sources. That, for the period July 1, 1975 to December 31, 1975, petitioner's income was not derived from or connected with New York sources, as it was based upon the performance of services which, of necessity, obligated the petitioner's out-of-state duties in the service of his employer in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

B. That the Audit Division is directed to allocate petitioner Robert Ernst's salary and adjustment to income on the fraction of \$15,000.00 earned in New York State as the numerator, and \$30,000.00 earned in 1975 as the denominator.

C. That the petition of Robert Ernst and Josephine Ernst is granted to the extent found in Conclusion of Law "B" supra, and except as so granted, the Notice of Deficiency dated August 10, 1978 is sustained, together with such additional interest as may be legally owing.

DATED: Albany, New York

JAN 3 1983

STATE TAX COMMISSION

ACTING PRESIDENT

Francis R. Koenig  
COMMISSIONER

COMMISSIONER