

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Jonathan L. & Susan K. Gross	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund	:	
of Personal Income Tax under Article 22 of the Tax	:	
Law for the Year 1975 and New York City	:	
Non-Resident Earnings Tax under Chapter 46, Title	:	
U of the Administrative Code of the City of New	:	
York for the Year 1976.	:	

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 December, 1982, he served the within notice of Decision by certified mail upon Jonathan L. & Susan K. Gross, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jonathan L. & Susan K. Gross
150 Princeton-Hightstown Rd.
Princeton Junction, NJ 08550

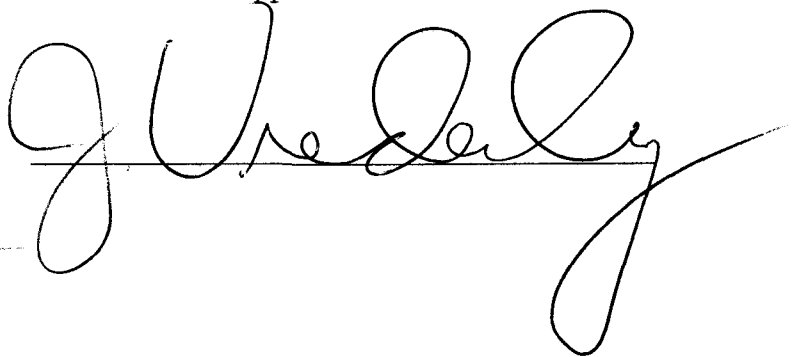
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 3, 1982

Jonathan L. & Susan K. Gross
150 Princeton-Hightstown Rd.
Princeton Junction, NJ 08550

Dear Mr. & Mrs. Gross:

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 & 1312 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JONATHAN L. GROSS and SUSAN K. GROSS
fo Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1975 and New York
City Non-Resident Earnings Tax under Chapter 46,
Title U of the Administrative Code of the City
of New York for 1976.

DECISION

Petitioners, Jonathan L. Gross and Susan K. Gross, 150 Princeton-Hightstown Road, Princeton Junction, New Jersey 08550, 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 and New York City non-resident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for 1976 (File Nos. 28959 and 30438).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 30, 1981 at 9:00 A.M. Petitioner Jonathan L. Gross appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

ISSUES

I. Whether amounts received by petitioner Jonathan Gross in 1975 constituted a fellowship grant.

II. Whether income received by nonresident petitioner Jonathan L. Gross while on sabbatical leave from his New York employer, Columbia University, may properly be allocated to sources without New York State for 1975.

III. Whether the Notice of Deficiency for 1976 correctly reflected the petitioners' New York income.

IV. Whether income received from Columbia University for research done during June, July and August of 1976 and for seminars and research done during the academic year 1976, by petitioner Jonathan L. Gross, may be allocated to sources without New York State.

FINDINGS OF FACT

1. Petitioners, Jonathan L. Gross and Susan K. Gross, filed joint New York State income tax nonresident returns for 1975 and 1976 wherein Jonathan L. Gross allocated sabbatical leave earnings and compensation from his New York State employer, Columbia University, to sources without the State of New York.

2. On July 13, 1977, the Audit Division issued a Statement of Audit Changes to petitioner Jonathan L. Gross wherein petitioner's claimed allocation was disallowed for 1975 on the grounds that "[W]hile on sabbatical leave from Columbia University, days worked at Princeton University on research cannot be used to allocate any of your income to outside New York State, since the research was done at Princeton for your personal convenience and not out of necessity for your employer. Also, the amount of income to be reported on Line 5A, Page 1 of your return is the total of the income listed in column (a), Schedule A, less the \$575.41 State income tax refund." Accordingly, a Notice of Deficiency was issued for 1975 against petitioner Jonathan L. Gross on June 26, 1978 asserting personal income tax of \$526.54, plus interest of \$98.34, for a total due of \$624.88.

3. For 1975, petitioners did not carry forward to line 1, page 1, their federal adjusted gross income of \$22,669.64. This was why the Federal amounts shown on line 16, page 2 and line 1, page 1, were different. The Audit Division

conceded that total New York State income should not be more than \$19,909.49, and it also conceded that petitioner Jonathan Gross was entitled to exclude the fellowship grant from income.

4. On March 29, 1980, the Audit Division issued a Statement of Audit changes to petitioners, Jonathan L. Gross and Susan K. Gross, wherein petitioners' claimed allocation was disallowed for 1976 on the grounds that "[S]ince services performed outside New York State are for your convenience rather than required by your employer, total income from wages are subject to New York State and New York City tax." Accordingly, a Notice of Deficiency was issued for 1976 against petitioners, Jonathan L. Gross and Susan K. Gross, on April 11, 1980 asserting personal income tax of \$2,178.83, plus interest of \$550.01, for a total due of \$2,728.84.

5. In computing the Notice of Deficiency issued April 11, 1980, the Audit Division included in the total New York State and City income (\$34,598.17), the New Jersey income of petitioner Susan K. Gross. After the hearing, the Audit Division conceded that the total New York State and City income for 1976 should not be more than \$24,145.67.

6. Petitioner Jonathan L. Gross is a professor of Mathematical Statistics and Computer Science at Columbia University. Petitioner was granted sabbatical leave for the period May 14, 1975 through the middle of January, 1976. The petitioner spent this time doing research at Princeton University. In 1976, the petitioner conducted seminars and research during the academic year at Princeton University on a one day a week basis as well as research during the summer months. During the periods the petitioner was on sabbatical and/or

doing research at Princeton University, the petitioner received his compensation from Columbia University.

7. Petitioner Jonathan Gross contended that he is entitled to allocate his sabbatical leave compensation since the sabbatical leave is considered part of his service to the University. He further contended that research was required in accordance with the Faculty Handbook, of which portions are reproduced below:

Columbia's role is that of education for excellence--a term that embraces superior teaching and the furtherance of knowledge through research, pre-eminence in the professions, and leadership in community and national affairs. Columbia's status as a private institution, its location, its faculty, and its reputation provide the basis for this diversified but single-minded educational purpose.

* * *

By accepting a full-time appointment in the University, an officer of instruction assumes primary responsibility for "the thorough, efficient and earnest performance of the duties of his office" (Section 60 of the University Statutes). This includes teaching, scholarly research, and service on committees of the department, the faculty, and the University.

* * *

The University recognizes that the scholarly research of an officer of instruction not only increases professional competence but also fulfills in part the officer's obligations as a teacher. The custom of the leading universities suggests that the equivalent of one day a week may be looked upon as a normal allotment of time for research. This measure is of course greatly increased in departments where advanced instruction is carried on as a part of individual or team research.

* * *

The University is dedicated to scholarly activity in the broadest sense and holds that the results of university research should be made public with the greatest possible freedom. Accordingly, it is not judged to be within the sphere of University scholarly activities to assert claim to ownership or to seek control over the writings, inventions, or discoveries of its staff. (Emphasis supplied by petitioner.)

8. The research done by petitioner Jonathan Gross could only have been done at Princeton University. Although Columbia University was interested in the petitioner doing research, it did not exercise direction or control over petitioner's research as to techniques, methods, what was to be accomplished or where it was to be accomplished.

CONCLUSIONS OF LAW

A. That the non-resident earnings tax imposed by Chapter 46, Title U of the Administrative Code of the City of New York is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law.

B. That any allowance claimed for days worked outside of this 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 services of his employer (20 NYCRR 131.16).

Since the services rendered by petitioner at Princeton University during 1975 and 1976 were not rendered out of necessity of 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 research at Princeton University may have been of some benefit to Columbia University does not constitute a justifiable basis for allocating wage income from Columbia University.

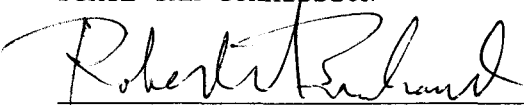
C. That the Audit Division is hereby directed to modify the Notice of Deficiency dated June 26, 1978 in accordance with Finding of Fact "3" and the Notice of Deficiency dated April 11, 1980 in accordance with Finding of Fact "5".

D. That the petition of Jonathan L. Gross and Susan K. Gross is granted to the extent provided in Conclusion of Law "C" and that said petition is, in all other respects, denied.

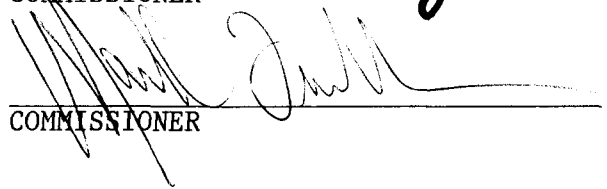
DATED: Albany, New York

DEC 03 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER