

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Thomas E. Lawrence	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1974.	:	

State of New York  
County of Albany

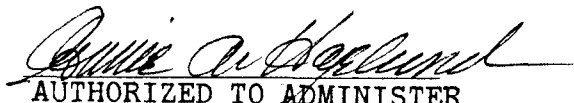
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Thomas E. Lawrence, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

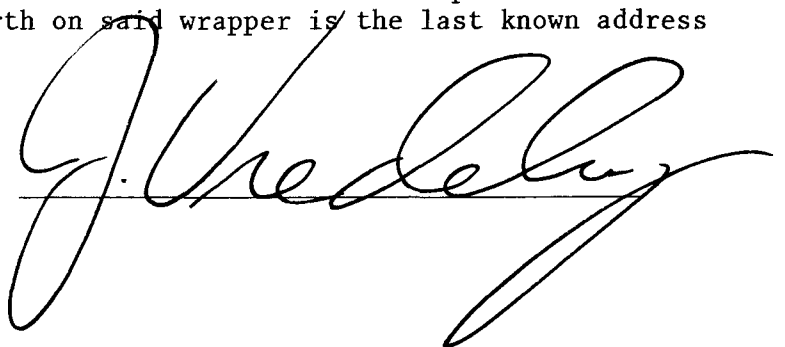
Thomas E. Lawrence  
1 Waterhouse St.  
Cambridge, MA 02138

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  
14th day of December, 1982.

  
ANNE C. HAGLUND  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Thomas E. Lawrence :  
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 :  
1974. :  
\_\_\_\_\_

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 14th day of December, 1982, he served the within notice of Decision by certified mail upon Seymour F. Bernstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

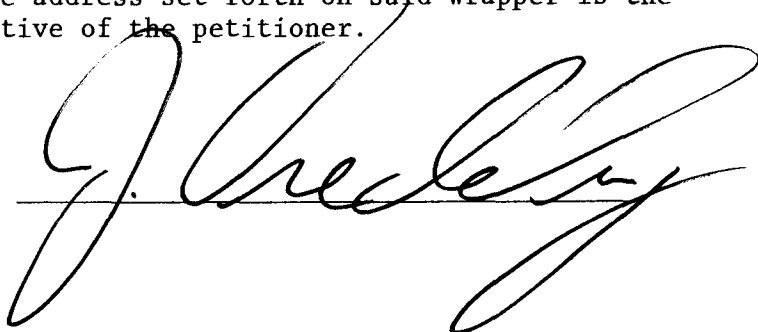
Seymour F. Bernstein  
Deloitte, Haskins & Sells  
1 World Trade Center  
New York, NY 10048

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  
14th 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 14, 1982

Thomas E. Lawrence  
1 Waterhouse St.  
Cambridge, MA 02138

Dear Mr. Lawrence:

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  
Seymour F. Bernstein  
Deloitte, Haskins & Sells  
1 World Trade Center  
New York, NY 10048  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
THOMAS E. LAWRENCE	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1974.	:	

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Petitioner, Thomas E. Lawrence, 1 Waterhouse Street, Cambridge, Massachusetts 02138, 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 1974 (File No. 19908).

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 January 18, 1982 at 2:45 P.M. Petitioner appeared with Seymour F. Bernstein, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (James F. Morris, Esq., of counsel).

ISSUE

Whether petitioner properly allocated the salary income earned during his nonresident period to sources within and without the State of New York.

FINDINGS OF FACT

1. Thomas E. Lawrence (hereinafter petitioner) filed a New York State Income Tax Resident Return for the period January 1 through June 22, 1974 in conjunction with a New York State Income Tax Nonresident Return for the period June 23 through December 31, 1974 along with a Schedule for Change of Resident

Status. On his nonresident return petitioner allocated his salary income derived during such period to New York State as follows:

$$\begin{array}{l} \text{days worked in NY } \frac{6}{99} \times \$19,672.48 = \$1,192.27 \\ \text{total days worked } \frac{6}{99} \\ \text{(in nonresident period)} \end{array}$$

2. On April 22, 1976 the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that "Days worked at home are considered to be for your own convenience. Therefore, they are counted as days worked in New York State and the income derived therefrom is taxable to New York State." Based on the above, petitioner's salary allocation for his nonresident period was recomputed as follows:

$$\begin{array}{l} \text{days worked in NY } \frac{94}{99} \times \$19,674.48^1 = \$18,680.82 \\ \text{total days worked } \frac{94}{99} \\ \text{(in nonresident period)} \end{array}$$

Accordingly, a Notice of Deficiency was issued against petitioner on May 23, 1977 asserting additional personal income tax of \$2,008.19, plus interest of \$359.16, for a total due of \$2,367.35.

3. In 1957, petitioner commenced his employment with International Computers Limited, London (ICL, London). His duties dealt with the conduct of the affairs of ICL, London in the United States. He was initially stationed in Boston, but was subsequently transferred to New York in 1960.

4. On February 12, 1970, petitioner entered into a three year employment contract with ICL, London. Pursuant to the terms of such contract, which became retroactively effective January 1, 1970, termination by either party required eighteen (18) months previous notice in writing.

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<sup>1</sup> Appears to be typographic error. Pursuant to return, salary derived during nonresident period was \$19,672.48.

5. ICL, London, which was in the business of manufacturing computers, appointed petitioner president of its wholly owned subsidiary, International Computers Limited, USA (ICL, USA), a New York corporation. Petitioner was not an officer of ICL, London.

6. In May, 1974, the newly appointed managing director of ICL, London requested petitioner's resignation. As the result of an extension, petitioner's contract was still in effect, therefore an eighteen month written termination notice was required.

7. On May 16, 1974, petitioner gave notice of his intent to resign from ICL, London. Such notice, which was effective as of June 30, 1974, allowed for petitioner's resignation from ICL, London eighteen months later on December 31, 1975. Pursuant to such notice, petitioner resigned from his employment as President and Director of ICL,USA effective June 30, 1974.

8. Since petitioner's employment with ICL,USA had ceased as of June 30, 1974, he was prohibited from rendering services for said company. The eighteen month balance of petitioner's employment under contract with ICL, London was spent as a consultant.

9. Although petitioner's employment with ICL,USA was terminated on June 30, 1974, it continued to issue petitioner his payroll checks. This was done as a matter of convenience and ICL, London reimbursed ICL,USA for said checks issued.

10. On June 23, 1974 petitioner went to England to spend his last week of employment with ICL,USA at the offices of ICL, London "to clean up loose ends".

11. Petitioner effected a change of residence from New York to Massachusetts on June 23, 1974. On his return from England, he went directly to Massachusetts.

12. During petitioner's period of residence in Massachusetts (June 23 through December 31, 1974), he visited the ICL,USA office six times. Although he was no longer employed by ICL,USA during this period, such visits were made as a courtesy to, and at the request of, his successor as president of ICL,USA for the purpose of clarifying matters which petitioner had previously worked on. The management of ICL, London had no knowledge of petitioner's visits.

13. The ninety-three (93) days claimed by petitioner to have been worked without New York during his nonresident period were days he was available to ICL, London as a consultant.

14. The Audit Division's position at the hearing was that the days worked at home during petitioner's nonresident period were done so for petitioner's own convenience and therefore such days should be considered days worked in New York for salary allocation purposes.

#### CONCLUSIONS OF LAW

A. That the days worked by petitioner during his nonresident period were worked while he was an employee of ICL, London, not as an employee of the New York corporation ICL, USA. Accordingly, since petitioner's employer was not located in New York State at the time such days were worked, the convenience verses necessity test for days worked without New York during such period is inapplicable and those days worked at petitioner's home without New York may not be considered days worked in this State (20 NYCRR 131.16)

B. That if personal services are performed within New York, whether or not as an employee, the compensation for such services includible in Federal adjusted gross income constitutes income from New York sources. [20 NYCRR 131.4(c)] Accordingly, the income derived by petitioner attributable to the

six days worked in New York during his nonresident period constitutes income from New York sources.

C. That the petition of Thomas E. Lawrence is granted and the Notice of Deficiency dated May 23, 1977 is hereby cancelled.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

~~ACTING~~

PRESIDENT

COMMISSIONER

COMMISSIONER