

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
James & Kathryn Maloney :
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 23rd day of April, 1982, he served the within notice of Decision by certified mail upon James & Kathryn Maloney, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James & Kathryn Maloney
6 Washington Park
Maplewood, NJ 07040

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
23rd day of April, 1982.

Ernie A. Hagelund

Jay Vredenburg

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

April 23, 1982

James & Kathryn Maloney
6 Washington Park
Maplewood, NJ 07040

Dear Mr. & Mrs. Maloney:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JAMES MALONEY and KATHRYN MALONEY
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, James Maloney and Kathryn Maloney, 6 Washington Park, Maplewood, New Jersey 07040, 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. 23819).

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 October 21, 1980 at 2:45 P.M. Petitioners, James Maloney and Kathryn Maloney, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether salary received by petitioner James Maloney from Town and Country Living Division of United Merchants and Manufacturing, Inc. (hereinafter "corporation") pursuant to an employment contract, was subject to New York State income tax for 1975.

FINDINGS OF FACT

1. Petitioners, James Maloney and Kathryn Maloney, filed a New York State Income Tax Nonresident Return (Form IT-203) for 1975 in which they excluded from New York income, salary paid to petitioner James Maloney of \$33,333.36.

2. On January 16, 1978, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$1,169.93, plus interest of \$174.34, for a total of \$1,344.00. The Notice of Deficiency was based on a Statement of Audit Changes dated November 4, 1977 which allocated petitioner James Maloney's salary on the same basis as his prior years salary. This allocation was made on the ground that petitioner's salary was for past services.

3. On September 3, 1974, petitioner James Maloney entered into an employment agreement with the corporation to begin September 4, 1974 and end August 31, 1975, at a salary of fifty thousand dollars per annum, payable in equal monthly installments on the last day of each and every month during the life of the agreement.

4. Petitioner James Maloney introduced into evidence a letter dated June 18, 1979 from the corporation which states, in relevent part, that "because of various circumstances, your services were no longer required as of 2/17/75. However, we honored your contract and continued to send your monthly salary check through 8/31/75."

5. Petitioner James Maloney's salary payments, made by the corporation pursuant to the employment contract, were paid even though no services were rendered during 1975. At the end of each month, petitioner received a check from the corporation which was mailed to his home. Mr. Maloney argued that such payments were for services to be rendered in the future outside New York State.

CONCLUSIONS OF LAW

A. That petitioner James Maloney has failed to meet the burden of proof imposed by section 689(e) of the Tax Law to show that salary received during 1975 from a continuing contractual obligation was not a form of deferred

compensation attributable to past contractual services performed within and without New York State or that it was for future services to be rendered outside New York State.

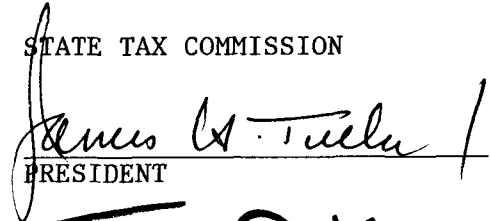
B. That the salary received by petitioner James Maloney is subject to New York State income tax within the meaning and intent of section 632 of the Tax Law (see Petition of Daniel D. and Margaret R. Kinley S.T.C. August 31, 1979).

C. That the petition of James Maloney and Kathryn Maloney is denied and the Notice of Deficiency issued on January 16, 1978 is sustained.

DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER