

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
James H. & Eileen J. O'Shaughnessy	:	
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	:	
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 13th day of August, 1982, he served the within notice of Decision by certified mail upon James H. & Eileen J. O'Shaughnessy, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

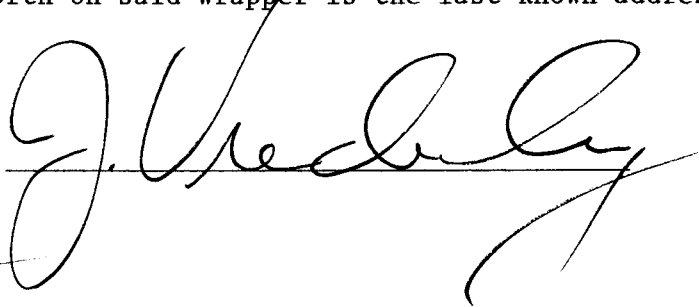
James H. & Eileen J. O'Shaughnessy
12 Barcelona Dr.
Clifton Park, NY 12065

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
13th day of August, 1982.





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

August 13, 1982

James H. & Eileen J. O'Shaughnessy
12 Barcelona Dr.
Clifton Park, NY 12065

Mr. & Mrs. O'Shaughnessy:

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 H. O'SHAUGHNESSY and EILEEN J. O'SHAUGHNESSY
for Redetermination of a Deficiency or for Refund
of Personal Income Tax under Article 22 of the
Tax Law for the Year 1976.

DECISION

Petitioners, James H. O'Shaughnessy and Eileen J. O'Shaughnessy, 12 Barcelona Drive, Clifton Park, New York 12065, 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 1976 (File No. 27953).

Petitioners waived their right to a small claims hearing and requested that a decision be rendered based on the record as presently contained in their file. Upon review of the file the State Tax Commission hereby finds:

ISSUE

Whether a moving expense reimbursement totaling \$10,933.00 was income derived from New York State sources, thereby subjecting said reimbursement to New York State personal income tax.

FINDINGS OF FACT

1. Petitioners, James H. O'Shaughnessy and Eileen J. O'Shaughnessy, were nonresidents of New York State from January 1, 1976 to June 14, 1976 and residents for the balance of the year. Accordingly, they filed a joint New York State Income Tax Nonresident Return for 1976 covering the period of their nonresidence and a joint New York State Income Tax Resident Return covering the period of their residence. On the nonresident return, petitioners reported total wage income of \$23,538.00 in the Federal column and \$12,605.00 in the New

York State column, the difference representing a \$10,933.00 moving expense reimbursement received by James H. O'Shaughnessy from his employer. Petitioners did not claim on either the resident or nonresident returns an adjustment to income for moving expenses.

2. On July 18, 1979 the Audit Division issued a Notice of Deficiency to petitioners for the year 1976, asserting that additional personal income tax of \$612.75 was due, together with interest. The Notice of Deficiency was based on a Statement of Audit Changes, dated December 5, 1977, wherein total New York income reported on petitioners' nonresident return was increased by \$6,539.00, from \$12,605.00 to \$19,144.00. The Audit Division computed the \$6,539.00 increase by considering the \$10,933.00 moving expense reimbursement as income derived from New York sources and subtracting therefrom a moving expense deduction of \$4,394.00.

3. On March 1, 1976 petitioner James H. O'Shaughnessy was transferred by his employer from their New York City office to their Albany, New York office. All of the services performed by petitioner James H. O'Shaughnessy on behalf of his employer were performed within the State of New York.

4. At some undetermined date prior to June 15, 1976, petitioners sold their personal residence in the State of New Jersey and purchased a new home in the Albany area. Petitioner James H. O'Shaughnessy received a \$10,933.00 reimbursement from his employer for the expenses he incurred in the sale of the home in New Jersey, the purchase of the new home in New York and actual moving costs.

5. Petitioners contend that the moving expense reimbursement of \$10,933.00, which the Audit Division attributed to petitioners' nonresident period, was not income derived from or connected with New York State sources. Of the \$10,933.00

reimbursement received by petitioners, \$4,676.50 represented reimbursement for expenses incurred in the sale of the house located in New Jersey (e.g. real estate commission, mortgage cancellation, attorney's fee and transfer tax).

CONCLUSIONS OF LAW

A. That section 82 of the Internal Revenue Code provides that:

"There shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment or self-employment." (underlining supplied)

B. That petitioner James H. O'Shaughnessy performed services for his employer entirely within the State of New York during both his periods of nonresidence and residence. Accordingly, the moving expense reimbursement of \$10,933.00 received from his employer is includable in New York income.

C. That the petition of James H. O'Shaughnessy and Eileen J. O'Shaughnessy is denied and the Notice of Deficiency dated July 18, 1979 is sustained, together with such interest as may be lawfully due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 13 1982

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER