

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Charles Perna

:

:

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

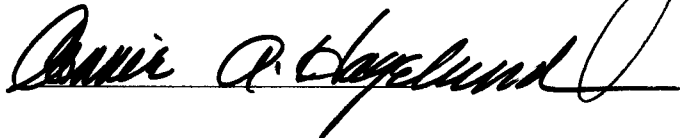
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Charles Perna, the petitioner in the within proceeding,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

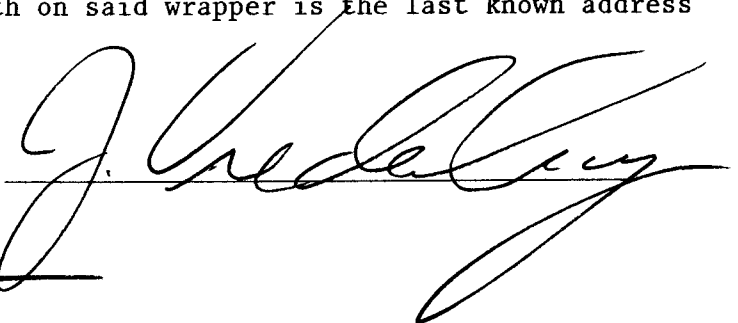
Charles Perna
18 Arcularius Terrace
Maplewood, NJ 07040

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
14th day of December, 1982.





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

December 14, 1982

Charles Perna
18 Arcularius Terrace
Maplewood, NJ 07040

Dear Mr. Perna:

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	:	
CHARLES PERNA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioner, Charles Perna, 18 Arcularius Terrace, 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. 27055).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 17, 1982 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner has sustained the burden of proof of establishing the number of days worked within and without New York State.

FINDINGS OF FACT

1. Petitioner, Charles Perna, and his wife, Leigh Perna, filed a joint New York State Income Tax Nonresident Return for 1975. On this return petitioner listed his residence as being in Maplewood, New Jersey. The wage and tax statements attached to the return disclosed income from two employers with addresses in New York: Faulkner, Dawkins and Sullivan, Inc. ("Faulkner") and Loeb, Rhoades & Co. ("Loeb"). Petitioner did not attribute any of his income

from Loeb as being from New York sources. However, petitioner did allocate his income from Faulkner on the basis of days worked within and without New York.

2. Petitioner and his wife filed a joint U.S. Individual Income Tax Return for 1975. On this return petitioner and his wife listed their residence as being in Maplewood, New Jersey. They reported that they had five exemptions and itemized deductions of \$11,790.00.

3. On January 8, 1979, the Audit Division issued to petitioner a Notice of Deficiency which asserted a deficiency of personal income tax of \$3,826.40, plus interest of \$888.39, for a balance due of \$4,714.79. The Statement of Audit Changes, which had been issued to petitioner and his wife, stated that since petitioner and his wife had failed to furnish information requested in three prior letters, the compensation received by petitioner from the two New York employers would be considered entirely New York income. The computations utilized in the Statement of Audit Changes disallowed a capital loss of \$1,000.00, a loss of \$7,343.00 which was reported under "other income", and an unexplained adjustment to income of \$2,500.00. Petitioner did not contest these adjustments. In addition, the Statement of Audit Changes computed petitioner's purported personal income tax liability utilizing the maximum standard deduction and two exemptions.

4. During the year in issue petitioner was employed as a stockbroker at two firms.

5. From 1974 through February 21, 1975, petitioner was employed by Loeb at an office in Paramus, New Jersey. All of petitioner's earnings from Loeb were derived from petitioner's activities at Loeb's New Jersey office.

6. On February 24, 1975, petitioner began working for Faulkner in New York City. In early July, 1975, petitioner suffered an injury which made it

difficult for petitioner to commute to New York City. Therefore, on July 21, 1975, petitioner was reassigned to Faulkner's office in Chatham, New Jersey. No evidence was presented as to whether petitioner performed work for Faulkner in New York after his reassignment to the Chatham, New Jersey office.

7. During the period in issue petitioner also performed work at home.

8. Petitioner determined the number of days he worked in and out of New York during the year in issue on the basis of notes he maintained during the period. Petitioner was not able to produce a complete set of these notes either at or after the hearing.

9. The Audit Division conceded at the hearing that petitioner was entitled to an allocated portion of the personal exemptions and itemized deductions claimed on his U.S. Individual Income Tax Return during the year in issue.

CONCLUSIONS OF LAW

A. That 20 NYCRR 131.4(b) provides in pertinent part:

"Compensation for personal services rendered by a non-resident individual wholly without the State is not included in his New York adjusted gross income, regardless of the fact that payment may be made from a point within the State or that the employer is a resident individual, partnership or corporation."

B. That since the work performed by petitioner for Loeb was conducted wholly outside of New York, the income from Loeb is not subject to New York personal income tax (20 NYCRR 131.4(b); Matter of Hayes v. State Tax Commission, 61 A.D.2d 62).

C. That since petitioner was unable to produce proper documentary substantiation of the number of days worked within and without New York during the year in issue, petitioner has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to substantiate the actual number of days worked outside of New York State. Therefore, all of petitioner's income from Faulkner

is subject to New York personal income tax (Tax Law §632(a)(1)); (see Matter of Charles E. McCarthy, State Tax Commission, October 2, 1981, Matter of Richard and Susan Fields, State Tax Commission, May 31, 1977).

D. That in view of Finding of Fact "9", petitioner's liability is to be recomputed allowing an allocated portion of the exemptions and itemized deductions claimed on petitioner's U.S. Individual Income Tax Return for 1975 (Tax Law §635(a) and §635(c) and §636(a)).


E. That the petition of Charles Perna is granted to the extent of Conclusions of Law "B" and "D" and the Audit Division is directed to modify the Notice of Deficiency accordingly; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER