

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Edward A. & Marilyn Von Lindern : 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

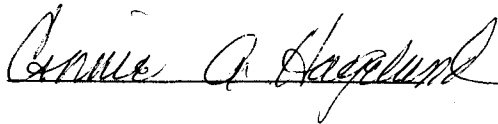
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon Edward A. & Marilyn Von Lindern, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

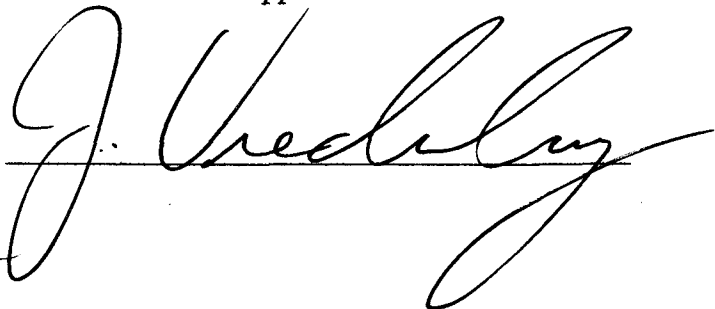
Edward A. & Marilyn Von Lindern
61 Page Dr.
Oakland, NJ 07436

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
26th day of March, 1982.





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

March 26, 1982

Edward A. & Marilyn Von Lindern
61 Page Dr.
Oakland, NJ 07436

Mr. & Mrs. Von Lindern:

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	:	
EDWARD A. VON LINDERN AND MARILYN VON LINDERN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1975.	:	

Petitioners Edward A. Von Lindern and Marilyn Von Lindern, 61 Page Drive, Oakland, New Jersey 07436, 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. 23916).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 2, 1981 at 9:15 A.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (I. Levy, Esq., of counsel).

ISSUE

Whether salary income of \$38,532.00 is taxable for personal income tax purposes under Article 22 of the Tax Law.

FINDINGS OF FACT

1. In May, 1976 petitioners Edward A. Von Lindern and Marilyn Von Lindern filed a joint New York State Income Tax Nonresident Return for the year 1975, on which income and adjustments were reported as follows:

	<u>Federal Amount</u>	<u>N.Y.S. Amount</u>
Salary	\$87,145.00	\$38,532.00
Dividends and Interest	4,642.00	-0-
Business Income	3,750.00	3,750.00
Capital Losses	(978.00)	-0-
Total	<u>\$94,559.00</u>	<u>\$42,282.00</u>
Moving Expense	18,631.00	18,631.00
Total Income	<u>\$75,928.00</u>	<u>\$23,651.00</u>

2. On June 19, 1978, the Tax Compliance Bureau issued a Notice of Deficiency for \$1,301.98 plus penalties and interest, along with an explanatory Statement of Audit Changes which stated, in part, the following:

Adjusted moving expense has been prorated to the extent that New York income is included in total income by the following formula:

$$\begin{array}{lcl} \text{New York income} & - & \$42,282.00 \times \$18,631.00 = \$8,330.84 \text{ New York} \\ \text{Total income} & - & \$94,559.00 \qquad \qquad \text{portion of moving expense} \end{array}$$

$$\text{Percentage limitation has been recomputed: } \frac{\$33,951.16}{\$75,928.00} = 44.71\%$$

Section 685(a)(1) and (2) penalty has been assessed since you failed to file your return and pay balance due by the due date.

3. In August, 1978 petitioner Edward A. Von Lindern and Marilyn Von Lindern filed a joint "amended" New York State Income Tax Nonresident Return for the year 1975, on which the sole item reported was business income of \$3,750.00, supra, and a refund of \$1,469.76 was requested.

4. Petitioner Edward A. Von Lindern was a resident of, and employed in, New York State when in 1965 petitioner's employer International Telephone and Telegraph Corporation (hereinafter ITT) transferred him to its international office in Brazil. While in Brazil petitioners sold their home in New York State.

5. In 1967, petitioner was transferred to the corporate offices of ITT Europe, Inc., in Belgium where he remained until he was terminated. On July 1, 1975 petitioners returned to the United States and resided at a motel in

Connecticut. Shortly, thereafter, petitioners moved to a motel in Fort Lee, New Jersey. On July 30, 1975, petitioners entered into a contract of sale to purchase a home in Oakland, New Jersey.

6. All salaries, severance pay and moving expenses paid to petitioner Edward A. Von Lindern in the sum of \$87,145.00 during the year 1975 were for services performed during his tenure outside the United States. However, in November, 1975, petitioner Edward A. Von Lindern was hired by ITT in New York and was paid a fee of \$3,750.00. Petitioner's services as a consultant were rendered in New York State.

7. Petitioners contended that the original New York State tax return was erroneously prepared by a tax preparer, who was not familiar with the Tax Law of New York and that the sole income taxable to them, as nonresident taxpayers, was the consultant fees of \$3,750.00 paid for services rendered in New York State.

8. No question of domicile or residence was raised at or before the hearing.

CONCLUSIONS OF LAW

A. That the salaries, severance pay and moving expenses paid to petitioner Edward A. Von Lindern during the year 1975 in the sum of \$87,145.00, which included the \$38,532.00 at issue, were compensation for personal service rendered by a nonresident individual wholly without New York State and is not included in petitioners' New York adjusted gross income within the meaning and intent of section 632(b)(1)(B) of the Tax Law and 20 NYCRR 131.4(b).

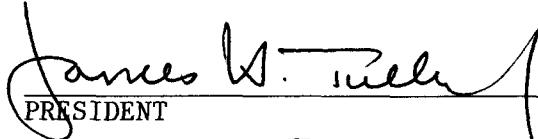
B. That the petition of petitioners Edward A. Von Lindern and Marilyn Von Lindern is granted and the Notice of Deficiency issued June 19, 1978 is cancelled.

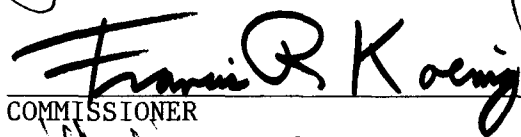
C. That the Audit Division is hereby directed to authorize a refund of \$1,469.76 in accordance with the "Amended" New York State Income Tax Nonresident Return filed for the year 1975, together with such interest as may be lawfully owing.

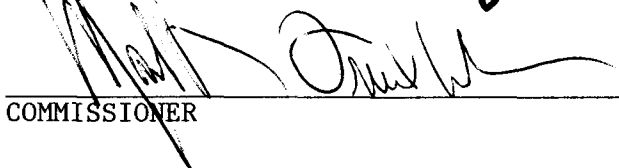
DATED, Albany, New York

MAR 26 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER