

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Paul Canter	:	
	:	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 1978.	:	
	:	

State of New York
County of Albany

David Parchuck, 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 11th day of May, 1983, he served the within notice of Decision by certified mail upon Paul Canter, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul Canter
171 Willowbrook Dr.
N. Brunswick, NJ 08902

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
11th day of May, 1983.

David Parchuck

James A. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul Canter :
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 :
1978. :

State of New York
County of Albany

David Parchuck, 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 11th day of May, 1983, he served the within notice of Decision by certified mail upon Donald J. Bain the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald J. Bain
277 Park Avenue
New York, NY 10017

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
11th day of May, 1983.

David Parchuck

Charmie A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 11, 1983

Paul Canter
171 Willowbrook Dr.
N. Brunswick, NJ 08902

Dear Mr. Canter:

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
Donald J. Bain
277 Park Avenue
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PAUL CANTER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1978.	:	

Petitioner, Paul Canter, 171 Willowbrook Drive, North Brunswick, New Jersey 08902, 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 1978 (File No. 29532).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 20, 1982 at 2:45 P.M. Petitioner appeared by Donald J. Bain, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly disallowed the adjustment to income taken by petitioner for alimony payments made to his former spouse.

II. Whether the Audit Division's interpretation and application of section 632 of the Tax Law, as it relates to an alimony deduction claimed by a nonresident taxpayer, is violative of the equal protection clauses of the New York State and Federal Constitutions.

FINDINGS OF FACT

1. Petitioner herein, Paul Canter, timely filed a New York State Income Tax Nonresident Return for the year 1978, wherein he claimed an adjustment to

income of \$6,408.00, the major portion of said adjustment representing alimony payments made by petitioner to his former spouse. On said return, petitioner apportioned the \$6,408.00 adjustment to New York sources on the same basis that wage income was allocated to New York.

2. On January 4, 1980, the Audit Division issued a Notice of Deficiency to petitioner for the years 1976, 1977 and 1978,¹ asserting that \$4,555.55 of New York State personal income tax was due together with interest. Said Notice was based on an explanatory Statement of Audit Changes dated January 2, 1980, wherein the Audit Division, in addition to other adjustments, disallowed petitioner's claimed alimony deduction for New York State purposes. The Audit Division considers said deduction as not being derived from or connected with an occupation carried on in New York State.

3. During 1978, petitioner, Paul Canter, was a nonresident of New York State for the entire year. Mr. Canter was employed by the Continental Grain Company, 277 Park Avenue, New York, New York. Petitioner's wage income of \$71,825.00 earned from the Continental Grain Company was allocated to New York sources based on a percentage, which was determined by placing the days worked in New York over total working days. Compensation paid to petitioner by the Continental Grain Company in 1978 was almost his exclusive source of income.

4. Petitioner argues that the alimony he was required to pay to his former spouse was tied into and connected with the salary he received from the Continental Grain Company and, for this reason, said alimony payments were derived from and connected with an occupation carried on in New York State. It

¹ The tax years 1976 and 1977 are not at issue, the parties having agreed to the proper tax due for said years. For 1978, petitioner agrees to a liability of \$1,588.00, but disputes that an additional \$718.00 is also due. The \$718.00 of tax due in dispute represents tax due from the disallowance of petitioner's claimed adjustment to income for alimony payments.

was further argued that the Audit Division's interpretation and application of section 632 of the Tax Law in the instant matter violates petitioner's constitutional right to equal protection under the New York State and Federal Constitutions.

CONCLUSIONS OF LAW

A. That the New York adjusted gross income of a resident individual is his Federal adjusted gross income for that year, subject to the modifications specified by section 612 of the Tax Law.

B. That the adjusted gross income of a nonresident individual is defined by section 632(a)(1) of the Tax Law as the net amount of income, gain, loss and deduction entering into his Federal adjusted gross income, derived from or connected with New York sources. Income and deductions from New York sources is defined by subdivision (b) of the same section, as follows:

"(1) Items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to:

* * *

(B) a business, trade, profession or occupation carried on in this state."

C. That alimony is not a deduction attributable to petitioner's profession carried on in this state, within the meaning of section 632(b)(1)(B) of the Tax Law.

D. That this Commission has no jurisdiction to pass on the issue of whether or not petitioner's constitutional right to equal protection has been violated.

E. That the petition of Paul Canter is denied and the Notice of Deficiency dated January 4, 1980, as modified by the agreement referred to in footnote 1, supra, is sustained.

DATED: Albany, New York

MAY 11 1983

STATE TAX COMMISSION

Rodrick G. Allen
PRESIDENT

Francis R. Koenig
COMMISSIONER

COMMISSIONER

Commissioner Friedlander dissents in accordance with his amended dissents in the matters of Lance J. Friedsam and Steven M. Goldring dated March 17, 1982 and November 9, 1982, respectively.

Mark Friedlander
COMMISSIONER