

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Donald & Mary Donahue :  
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. :

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AFFIDAVIT OF MAILING

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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Donald & Mary Donahue, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald & Mary Donahue  
Indian Field Rd.  
Meads Point  
Greenwich, CT 06830

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  
27th day of May, 1983.

David Parchuck

James A. Haydon

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Donald & Mary Donahue :  
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. :  
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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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Morton A. Karmel the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morton A. Karmel  
Karmel & Co.  
708 Third Ave.  
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  
27th day of May, 1983.

David Parchuck

Conrad A. Hayland

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Donald & Mary Donahue :  
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

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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Bruce D. Haims, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bruce D. Haims  
Debeuoise, Plimpton, Lyons & Gates  
299 Park Ave.  
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  
27th day of May, 1983.

David Parchuck

Annunzio Anticaglia  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

May 27, 1983

Donald & Mary Donahue  
Indian Field Rd.  
Meads Point  
Greenwich, CT 06830

Dear Mr. & Mrs. Donahue:

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 Law 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  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Morton A. Karmel  
Karmel & Co.  
708 Third Ave.  
New York, NY 10017

AND

Bruce D. Haims  
Debeuoise, Plimpton, Lyons & Gates  
299 Park Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
DONALD and MARY DONAHUE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

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Petitioners, Donald and Mary Donahue, Indian Field Road, Meads Point, Greenwich, Connecticut 06830, 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. 24227).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 27, 1981 at 10:50 A.M. Petitioner appeared by Debevoise, Plimpton, Lyons & Gates, Esqs., (Bruce D. Haims and Daniel J. Barry, Esqs., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq., (Barry Bresler, Esq., of counsel).

ISSUE

Whether the monies received by petitioner Donald Donahue during his non-resident period constituted severance pay attributable to service performed within New York State and therefore taxable as New York income.

FINDINGS OF FACT

1. Petitioner Donald Donahue was employed as an executive for twenty-one years by AMAX, Inc. ("AMAX") formerly American Metal Climax, Inc.
2. On August 1, 1977 the Audit Division issued a Statement of Audit Changes against petitioners, in which it concluded that all of the payments

received by Donald Donahue from AMAX were the result of employment with a New York State employer and includable on petitioners' non-resident return as taxable New York income.

3. On May 12, 1978, the Audit Division issued a Notice of Deficiency against the petitioners in the amount of \$167,240.76, plus interest and/or penalty of \$27,379.63 for a total of \$194,620.39.

4. Petitioner Donald Donahue was employed by AMAX under an Employment Agreement, dated October 1, 1971, which provided for him to render services to AMAX as an employee for a five-year term commencing October 1, 1971 and ending September 30, 1976 and thereafter to render consulting services as required by AMAX under the terms set forth in the agreement for a period of ten years.

5. Mr. Donahue was entitled to salary under the agreement. During 1975 Mr. Donahue received regular salary payments from AMAX amounting to \$88,550.00 through June 30 and \$40,000.02 after June 30.

6. After the moving of AMAX's executive offices from New York City to Greenwich, Connecticut in early 1975, petitioner Donald Donahue who was living in Port Washington, New York, moved with his family to Greenwich, Connecticut on or about June 30, 1975 and ceased to be a New York resident.

7. Petitioner Mr. Donahue and AMAX entered into a Severance Agreement, dated September 4, 1975, providing for the termination of his employment and future consulting services. Prior to his termination of employment petitioner had served AMAX for twenty-six years.

8. Under the Severance Agreement, the Employment Agreement was terminated without penalty or payment by either party to the other, except as set forth therein. AMAX confirmed that Mr. Donahue was no longer an officer, director or employee of AMAX and that he had no further obligation, duty, liability or

responsibility to AMAX under the Employment Agreement. In addition, the Severance Agreement provided for (a) the continuation of petitioner Donald Donahue's salary in lieu of terminal leave, and (b) a payment in settlement of AMAX's obligation pursuant to paragraph 3 of the Employment Agreement regarding consulting services.

9. The Severance Agreement also contemplated the settlement of rights and obligations of Mr. Donahue and AMAX under certain other plans and agreements, including Stock option Agreements dated, respectively, May 21, 1970 (extended December 2, 1971), September 5, 1968 (extended December 2, 1971), December 2, 1971 and July 2, 1974.

10. Petitioners filed both New York State resident and non-resident income tax returns for the year 1975. They excluded from New York income on their non-resident income tax return \$1,114,648.00, representing \$62,674.70 of salary paid to petitioner Donald Donahue, \$107,361.90 received by petitioner Donald Donahue under the Severance Agreement in settlement of AMAX's obligation to pay him pursuant to paragraph 3 of the Employment Agreement for consulting services and \$944,611.40 received for the cancellation of his stock options.

#### CONCLUSIONS OF LAW

A. That the New York adjusted gross income of a nonresident individual includes items of income entering into his Federal adjusted gross income which are attributable to a business, trade, profession or occupation carried on in this State. (20 NYCRR 131.4(d)).


B. That petitioner Donald Donahue's income at issue herein was attributable to approximately twenty six years of service to AMAX when it was located in New York State.

C. That the petition herein is denied and that the Notice of Deficiency is sustained.

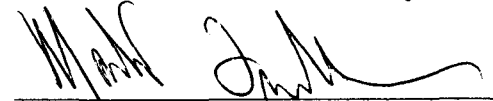
DATED: Albany, New York

MAY 27 1983

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER