

TA-36 (9/76)

State of New York - Department of Taxation and Finance
Tax Appeals Bureau

REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request <i>1/26/83</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition <i>SC 1-3-83</i>
Name <i>Robert + Josephine Ernst</i>	
Address <i>57 Thorn Ridge NW. Stamford, CT. 06903</i>	

Results of search by Files

<input type="checkbox"/> New address:	<i>2/1/83 RP 80 79</i> <i>4/1/83 AR 100</i> <i>1/26/83 ft</i>
<input type="checkbox"/> Same as above, no better address	
<i>can Rep</i> <input type="checkbox"/> Other:	<i>address correct — unclaimed</i>

Searched by	Section	Date of Search

PERMANENT RECORD

FOR INSERTION IN TAXPAYER'S FOLDER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



Robert & Josephine Ernst
57 Thorn Ridge Dr.
Stamford, CT 06903



CLAIM CHECK
NO. 83340

☐ HOLD
DATE 1/21/83

1-5-82
1ST NOTICE
JAN 10 1983
2ND NOTICE

RETURN
1-20

Detached from
PS Form 3848-A
Oct 1980



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

January 3, 1983

Robert & Josephine Ernst
57 Thorn Ridge Dr.
Stamford, CT 06903

Dear Mr. Ernst:

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
Mark S. Gross
360 North St.
White Plains, NY 10605
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ROBERT ERNST and JOSEPHINE ERNST
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1975.

DECISION

Petitioners, Robert Ernst and Josephine Ernst, 57 Thorn Ridge Drive, Stamford, Connecticut 06903, 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. 28647).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 17, 1981 at 10:45 A.M. Petitioners appeared with Mark S. Gross, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner Robert Ernst, a nonresident, is entitled to allocate part of his earnings to sources without New York State.

FINDINGS OF FACT

1. Petitioners, Robert Ernst and Josephine Ernst, his wife, filed a joint New York State Income Tax Nonresident Return for 1975. On said return, petitioner Robert Ernst's income from Scott Steel Fabricators, Inc., was allocated to New York State on the basis of days worked within and without the State.

2. On August 10, 1978, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$1,419.20, plus interest

of \$279.33, for a total of \$1,699.13. The Notice of Deficiency was based on a Statement of Audit Changes, issued under date of May 16, 1978, which disallowed petitioner's claimed allocation of wages on the ground that petitioner Robert Ernst did not work outside of New York State for the subject year. As a corollary, petitioner's deductions, including contributions to his Individual Retirement Account ("IRA") were also recomputed to conform to the allocation formula applied to his earnings. There was no separate disallowance of contributions made to the IRA by the Audit Division.

3. During the year at issue petitioners were residents of the State of Connecticut. Petitioner Robert Ernst was employed as a salesman and general manager by Scott Steel Fabricators, Inc. (hereinafter "corporation") at its office and factory located in New York State. On July 1, 1975, the corporation terminated operations at its New York factory as a result of an industry-wide strike by Shopmen's Local Union No. 455. The strike continued into 1976.

In anticipation of the strike, petitioner removed files and drawings related to pending contracts from the corporation's New York office. The work related to pending contracts was completed at plants, unrelated to the corporation, located in Stamford, Connecticut and Chicopeefalls, Massachusetts, under the supervision of petitioner Robert Ernst who continued to receive his salary from the corporation.

4. The work done by petitioner on pending contracts could not be done at his employer's New York factory because of the industry wide strike.

CONCLUSIONS OF LAW

A. That petitioner, Robert Ernst, performed services for his employer within and without New York State for subject year. That, for the period January 1, 1975 to June 30, 1975, petitioner's income was derived from or

connected with New York State sources. That, for the period July 1, 1975 to December 31, 1975, petitioner's income was not derived from or connected with New York sources, as it was based upon the performance of services which, of necessity, obligated the petitioner's out-of-state duties in the service of his employer in accordance with the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

B. That the Audit Division is directed to allocate petitioner Robert Ernst's salary and adjustment to income on the fraction of \$15,000.00 earned in New York State as the numerator, and \$30,000.00 earned in 1975 as the denominator.

C. That the petition of Robert Ernst and Josephine Ernst is granted to the extent found in Conclusion of Law "B" supra, and except as so granted, the Notice of Deficiency dated August 10, 1978 is sustained, together with such additional interest as may be legally owing.

DATED: Albany, New York

JAN 3 1983

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER