

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Philip & Helen Feick :
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Articles 22 & 30 of :
the Tax Law and Nonresident Earnings Tax under :
Chapter 46, Title U of the Administrative Code of :
the City of New York for the Year 1976. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Philip & Helen Feick, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip & Helen Feick
12 Telva Rd.
Wilton, CT 06897

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
10th day of November, 1983.

Martha L. Sennelle

Connie A. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Philip & Helen Feick :
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Articles 22 & 30 of :
the Tax Law and Nonresident Earnings Tax under :
Chapter 46, Title U of the Administrative Code of :
the City of New York for the Year 1976. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Solomon Liss the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Solomon Liss
Wendy, Adler & Liss
1440 Broadway, Rm. 2272
New York, NY 10018

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
10th day of November, 1983.

Martha L. Sennelle

Connie A. Hagelund

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

November 10, 1983

Philip & Helen Feick
12 Telva Rd.
Wilton, CT 06897

Dear Mr. & Mrs. Feick:

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 & 1312 of the Tax Law and Chapter 46, Title U of the Administrative Code of the City of New York, 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
Solomon Liss
Wendy, Adler & Liss
1440 Broadway, Rm. 2272
New York, NY 10018
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PHILIP FEICK AND HELEN FEICK	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles	:	
22 and 30 of the Tax Law and Nonresident	:	
Earnings Tax under Chapter 46, Title U of the	:	
Administrative Code of the City of New York for	:	
the Year 1976.	:	

Petitioner, Philip Feick and Helen Feick, 12 Telva Road, Wilton, Connecticut 06897, filed a petition for redetermination of a deficiency or for refund of personal income tax under Articles 22 and 30 of the Tax Law and nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1976 (File No. 31886).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 9, 1983 at 2:45 P.M., with all briefs to be submitted by March 9, 1983. Petitioner Philip Feick appeared with Solomon Liss, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the Audit Division properly held petitioners' entire Federal adjusted gross income subject to New York State and City personal income taxes.

FINDINGS OF FACT

1. Petitioners, Philip Feick and Helen Feick, filed a joint New York State Income Tax Nonresident Return for the year 1976 whereon they reported their income on Schedule A as follows:

	<u>Federal Amount</u>	<u>New York State Amount</u>
Wages	\$33,000.00	\$33,000.00
Dividends	1,501.00	750.00
Interest income	210.00	105.00
Business income	1,349.00	-0-
Sale or exchange of capital assets	(1,000.00)	(500.00)
Option income	1,356.00	678.00
Total Income	<u>\$36,415.00</u>	<u>\$34,033.00</u>

On Schedule A-1, petitioners erroneously allocated their total income of \$34,033.00, as reported for New York State purposes, to sources within and without New York State. Such allocation, which utilized a 365-day year, yielded, pursuant to petitioners' computation, total New York income of \$26,546.00. Petitioners submitted, in conjunction therewith, a joint New York State Income Tax Resident Return for 1976 whereon the only monetary entries were for New York taxable income and New York City resident tax. Petitioners also filed a 1976 Nonresident Earnings Tax Return for the City of New York whereon they indicated that they were New York City residents for the period "1/76 to 7/1/76". Wages of \$10,271.00 were reported on such return.

2. On August 8, 1978, as the result of petitioners' failure to reply to two inquiry letters, the Audit Division issued a Statement of Audit Changes to petitioners wherein their total Federal income of \$36,415.00 was deemed to be New York income. Accordingly, a Notice of Deficiency was issued against petitioners on April 11, 1980 asserting additional New York State personal income tax of \$150.07, additional New York City personal income tax of \$164.27, plus interest of \$79.34, for a total due of \$393.68.

3. Petitioners were residents of New York State and City from January 1, 1976 to August 27, 1976. From August 28, 1976 to December 31, 1976 they were residents of the State of Connecticut.

4. Petitioner Philip Feick was employed during the entire year 1976 by Keene Corporation, 345 Park Avenue, New York City. His 1976 salary derived from said corporation was \$33,000.04.

5. From September to December 1976, petitioner Philip Feick rendered services as a consultant to Clark Equipment Company, a Michigan corporation. His services were rendered solely without the State of New York. His compensation of \$2,127.90 was reduced by total deductions of \$778.00, yielding a net profit of \$1,349.90, which was reported as \$1,349.00 for Federal purposes, but not reported as income for New York State or City purposes.

6. Petitioners submitted a copy of their U.S. Individual Income Tax Return (1040) for 1976 with schedules showing dividend and interest income attributable to New York State and Connecticut sources. Said schedules also showed that option income was derived solely from New York sources and that a net capital loss of \$1,000.00 was incurred on security transactions while a New York State resident.

7. Since numerous errors were made on the returns filed by petitioners, they were allowed sufficient time subsequent to the hearing to submit a brief and a schedule detailing the deductions attributable to their resident and nonresident periods, together with supporting documentation. Documentation was also requested to support the salary allocation claimed by petitioner Philip Feick.

8. Subsequent to the hearing held herein, petitioners submitted a brief and schedule of days worked within and without New York during the period

August through December 1976. Said schedule showed the state in which petitioner Philip Feick claimed to have worked, but it did not show the number of working days, non-working days or the nature of duties performed. In their brief, petitioners argued that their items of income should be apportioned between their resident and nonresident periods based on the period of time allocable to each status. No schedule showing a breakdown of deductions attributable to their resident and nonresident periods was submitted.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Article 30.

B. That section 654 of Article 22 of the Tax Law and § U46-23.1(a) of Chapter 46 Title U of the Administrative Code of the City of New York contain similar provisions with respect to a change of resident status during the year. Section 654 provides, in pertinent part:

"(a) if an individual changes his status during his taxable year from resident to nonresident, or from nonresident to resident, he shall file one return as a resident for the portion of the year during which he is a resident, and one return as a nonresident for the portion of the year during which he is a nonresident."

C. That section 654 further provides that:

"(b) The New York taxable income and New York minimum taxable income for the portion of the year during which he is a resident shall be determined...as if his taxable year for federal income tax purposes were limited to the period of his resident status. The New York taxable income and New York minimum taxable income for the remaining portion of his taxable year during which he is a nonresident shall be determined...as if his taxable year for federal income tax purposes were limited to the period of his nonresident status."


D. That § U46-23.1(b) of Chapter 46, Title U of the Administrative Code of the City of New York provides that: "(b) The city taxable wages... for the portion of the year during which he is a nonresident shall be determined,... under this title as if his taxable year for federal income tax purposes were limited to the period of his nonresident status."

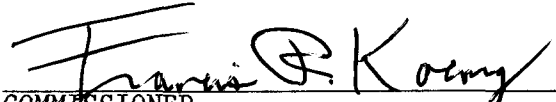
E. That the Audit Division is directed to modify the Notice of Deficiency issued April 11, 1980 by recomputing petitioner's income tax liability for 1976 on the basis of Findings of Fact "4" "5" and "6" supra; and that, the Notice of Deficiency as modified is sustained and the petition is in all other respects denied.

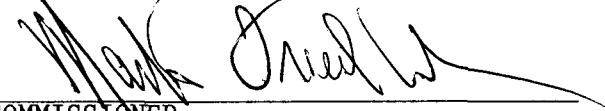
DATED: Albany, New York

NOV 10 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER