

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Gregory G. & Linda L. Ferencz : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Refund of :  
Personal Income Taxes under Article 22 of the Tax :  
Law and Chapter 46, Title U of the Administrative :  
Code of the City of New York for the Year 1979. :

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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 28th day of September, 1983, she served the within notice of Decision by certified mail upon Gregory G. & Linda L. Ferencz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gregory G. & Linda L. Ferencz  
40 Carl Sandburg Dr.  
Trenton, NJ 08690

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  
28th day of September, 1983.



**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 :  
Gregory G. & Linda L. Ferencz : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or for Refund :  
of Personal Income Taxes under Article 22 of the :  
Tax Law and Chapter 46, Title T of the Administra- :  
tive Code of the City of New York for the Year :  
1979. :

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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 28th day of September, 1983, she served the within notice of Decision by certified mail upon Gerard Byrne the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

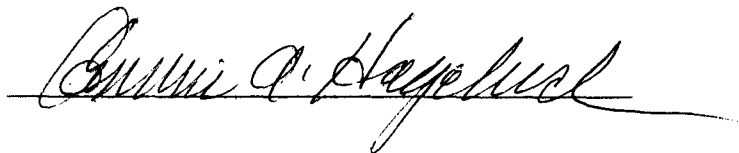
Gerard Byrne  
67 Cara Dr.  
Pearl River, NY 10965

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  
28th day of September, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

September 28, 1983

Gregory G. & Linda L. Ferencz  
40 Carl Sandburg Dr.  
Trenton, NJ 08690

Dear Mr. & Mrs. Ferencz:

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, 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  
Gerard Byrne  
67 Cara Dr.  
Pearl River, NY 10965  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
GREGORY G. FERENCZ and LINDA L. FERENCZ	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Article	:	
22 of the Tax Law and Chapter 46, Title U of	:	
the Administrative Code of the City of New York	:	
for the Year 1979.	:	

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Petitioners, Gregory G. Ferencz and Linda L. Ferencz, 40 Carl Sandburg Drive, Trenton, New Jersey 08690, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City non-resident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1979. (File No. 34846).

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 7, 1983 at 10:45 A.M., with all briefs to be submitted by March 7, 1983. Petitioner Gregory G. Ferencz appeared with Gerard Byrne. The Audit Division appeared by Paul B. Coburn, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether a moving expense reimbursement, which was attributable to petitioner Gregory G. Ferencz's move from Hawaii to New Jersey for New York employment, constitutes taxable income for New York State and New York City purposes.

FINDINGS OF FACT

1. Gregory G. Ferencz (hereinafter petitioner) and Linda L. Ferencz timely filed a joint New York State Income Tax Nonresident Return for the year 1979 whereon petitioner omitted a reimbursement of \$38,577.53 from his New York income. Such reimbursement, which was reported as income on his wage statement and entered into his federal adjusted gross income, was for expenses incurred in moving from Hawaii to New Jersey, resulting from his transfer to his employer's New York office. Additionally, petitioner failed to claim an adjustment to income for the allowable portion of his moving expenses. Petitioner also filed a 1979 nonresident earnings tax return for the City of New York whereon he computed his tax liability on his allocated gross wages, exclusive of said reimbursement.

2. On October 8, 1980 the Audit Division issued a Statement of Audit Changes to petitioners wherein said reimbursement was held taxable for New York State and City purposes. Such statement offered the following explanation:

"Since the moving expense reimbursement and the adjustment to income for moving expenses are related to employment in New York they are allocated to New York based on days worked in and out of New York. We computed income reportable to New York to be  $(180 \text{ divided by } 183 \times \$52,578.56)$  \$51,716.27 and the adjustment to income to be  $(180 \text{ divided by } 183 \times 12,367.00)$  \$12,164.18. We corrected your total New York income from \$13,721.00 to \$39,552.09 on your return."

3. The income computed prior to allocation of \$52,578.56 is comprised of petitioner's reported unallocated New York wages of \$14,001.00, plus the moving expense reimbursement of \$38,577.53. Days worked in New York (180) and total days worked (183) were as reported on petitioners' return.

4. On March 11, 1981 a Notice of Deficiency was issued against petitioners asserting additional New York State personal income tax of \$2,573.30, additional

New York City nonresident earnings tax of \$113.72 plus interest of \$201.34, for a total due of \$2,888.36.

5. The moving expenses at issue were incurred with respect to petitioner's acceptance of a promotional transfer by his employer, Kinney Shoe Corporation (Kinney). Such transfer was from a Kinney store in Hawaii, where petitioner held a management position, to the New York office, where he was assigned to the distribution department. Prior to said transfer, petitioner was employed by Kinney in Hawaii for over five years. At the time of his transfer to the New York office petitioner commenced residing in New Jersey.

6. Petitioner contended that the moving expense reimbursement at issue is not taxable for New York State and City purposes since it was paid in recognition of petitioner's past services with Kinney, and not with respect to future services to be rendered in New York. He claims that the fact that such payments are not specifically reimbursable to Kinney in the event he left its employ is an indication that the payments were related to past services rendered in Hawaii.

7. Petitioner submitted an excerpt from Kinney's policy manual relative to personal moving expenses. Such excerpt states in pertinent part that:

"In its desire to attract capable men and women and to offer the necessary promotion incentive to hold them once they are employed the Company policy has been to constantly move them to higher volume stores as rapidly as possible. When moving a manager the Company pays the moving expenses and transportation for both manager and family. Similarly, when an assistant manager is promoted to managerial status the company pays moving expenses. Transfer of the employee must be at the request of the Company to qualify for Company paid moving expenses.

\* \* \*

While it is most important to continue this policy of offering opportunity to men and women of ability and ambition it is also imperative that the cost angle be

closely watched. It is extremely costly to the Company to move households and the manager should realize that before such a move has been sanctioned the DM has received the written approval of the Divisional Sales Manager and the General Sales Manager. Before that approval was given the DM had to convince supervisors that the move was in the best interests of the Company and that there was full faith those interests would be satisfied."

CONCLUSIONS OF LAW

A. That pursuant to section 632(a)(1) of the Tax Law, the New York adjusted gross income of a nonresident individual includes the net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with the New York sources.

B. That section 632(b)(1) of the Tax Law provides that:

"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 carries on in this state."

C. That section 82 of the Internal Revenue Code states:

There shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment or self-employment.

D. That the language used with respect to moving expenses in Kinney's policy manual makes it clear that Kinney pays such expenses with the expectation that the "best interests of the Company" would be served in the future. Therefore, the moving expense reimbursement at issue herein is connected with New York sources rather than, as petitioner contended, in recognition of petitioner's past services in the state of Hawaii. Accordingly, the moving

expense reimbursement of \$38,577.53 is includable in petitioner's New York adjusted gross income to the extent computed by the Audit Division.

E. That the moving expense reimbursement is likewise subject to New York City non-resident earnings tax within the meaning and intent of sections U46-1.0(e) and U46-2.0(a)(1)(i) of Chapter 46, Title U of the Administrative Code of the City of New York.


F. That the petition of Gregory G. Ferencz and Linda L. Ferencz is denied and the Notice of Deficiency dated March 11, 1981 is hereby sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER