

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
David P. & Barbara B. Haskell :

: AFFIDAVIT OF MAILING

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 Nonresident :
Earnings Tax under Chapter 46, Title U of the :
Administrative Code of the City of New York for :
the Years 1976 & 1977.

State of New York
County of Albany

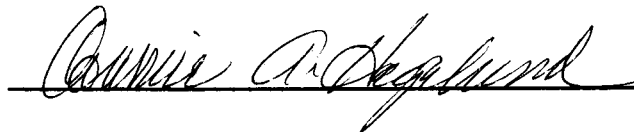
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon David P. & Barbara B. Haskell, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David P. & Barbara B. Haskell
Deer Isle, ME 04627

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
15th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 15, 1983

David P. & Barbara B. Haskell
Deer Isle, ME 04627

Dear Mr. & Mrs. Haskell:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DAVID P. HASKELL AND BARBARA B. HASKELL	:	DECISION
	:	
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 Nonresident Earnings Tax under Chapter 46,	:	
Title U of the Administrative Code of the City	:	
of New York for the Years 1976 and 1977.	:	

Petitioners, David P. Haskell and Barbara B. Haskell, Deer Isle, Maine 04627, 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 nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the years 1976 and 1977 (File No. 30323).

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 November 17, 1982 at 1:15 P.M. Petitioner David P. Haskell appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether income received by petitioner David P. Haskell from his New York employer during the period June 17, 1976 to September 30, 1977 is subject to New York State and New York City personal income taxes.

FINDINGS OF FACT

1. David P. Haskell (hereinafter petitioner) and his wife, Barbara B. Haskell, timely filed joint New York State income tax nonresident returns for

the years 1976 and 1977. On each return petitioner allocated the income derived from his New York employer, The Chase Manhattan Bank, to sources within and without New York State as follows:

1976

Days worked in New York $\frac{111}{225}$ x \$28,574.96 = \$14,096.98
Total days worked in year (allocated to NY)

1977

Days worked in New York $\frac{-0-}{-0-}$ x \$20,473.44 = -0-
Total days worked in year (allocated to NY)

Petitioner also filed New York City nonresident earnings tax returns for 1976 and 1977 whereon he claimed allocations of income identical to those claimed for New York State purposes. On all returns petitioner reported his occupation as "unemployed".

2. On September 7, 1978 the Audit Division issued a Statement of Audit Changes wherein petitioner's claimed allocations were disallowed. Said statement explained that:

"The entire amount of wages received from the Chase Manhattan Bank for the taxable years 1976 and 1977 are deemed attributable to prior services rendered in New York State and are taxable to New York State to the same extent they are taxable for Federal purposes. Therefore, the entire amount of wages for 1976 and 1977 have been used in the computation of your total New York income."

Accordingly, a Notice of Deficiency was issued against petitioners on March 3, 1980 asserting additional New York State personal income tax of \$1,086.87, additional New York City nonresident earnings tax of \$63.62, plus interest of \$311.53, for a total of \$1,462.02.

3. Prior to June 17, 1976 petitioner was employed by The Chase Manhattan Bank (the bank), 1 Chase Manhattan Plaza, New York City. On June 17, 1976 petitioner's employer "fired" him effective September 30, 1976. From June 17, 1976 through September 30, 1977 the bank paid petitioner his regular salary

although he rendered no services to the bank during said period. Petitioner was permitted by his former employer to represent himself as an employee of the bank to prospective employers until the effective date of his termination, September 30, 1976, even though he performed no services to the bank after June 17, 1976.

4. On petitioner's 1976 allocation schedule he claimed 114 days worked outside New York State. Such days were actually the days subsequent to his employment termination during which no services were rendered by him to the bank. The allocation schedule was used merely as an avenue for removing his post-termination pay from total New York income.

5. Petitioner argued that the post-termination income he received from the bank is exempt from New York State and City taxes since as of June 17, 1976 he neither rendered services in New York nor was he physically present in New York.

CONCLUSIONS OF LAW

A. That the income received by petitioner David P. Haskell during the period June 17, 1976 through September 30, 1977 constituted severance pay attributable to prior services rendered. As such, it was an item of income derived from or connected with New York sources which was attributable to an occupation carried on in the State and City of New York. Accordingly, such pay is taxable for New York State and New York City purposes within the meaning and intent of section 632(b)(1)(B) of the Tax Law and section U46-2.0(a)(2) of Chapter 46, Title U of the Administrative Code of the City of New York.

(Matter of Anthony Jackson and Jane Jackson, State Tax Commission decision, August 4, 1976.)


B. That the petition of David P. Haskell and Barbara B. Haskell is denied and the Notice of Deficiency dated March 3, 1980 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 15 1983


PRESIDENT


COMMISSIONER


COMMISSIONER