

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Scott R. Hutchinson :

:

: 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 1978.

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Scott R. Hutchinson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Scott R. Hutchinson
4606 W. Gray St.
Bldg. #3, Apt. 209
Tampa, FL 33609

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
6th day of May, 1983.

David Parchuck

Annice C. Hayward

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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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 6th day of May, 1983, he served the within notice of Decision by certified mail upon J. Karl Osburn the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

J. Karl Osburn
Osburn, Henning & Co.
617 E. Colonial Dr.
Orlando, FL 32803

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
6th day of May, 1983.

David Parchuck

Annie R. Hupland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Scott R. Hutchinson
4606 W. Gray St.
Bldg. #3, Apt. 209
Tampa, FL 33609

Dear Mr. Hutchinson:

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
J. Karl Osburn
Osburn, Henning & Co.
617 E. Colonial Dr.
Orlando, FL 32803
Taxing Bureau's Representative

STATE TAX COMMISSION

2. On May 31, 1979, petitioner filed a Claim for Credit or Refund of Personal Income Tax (Form IT-113X). The amount of refund claimed was \$492.00 and said claim was based on the tax benefit generated from the use of the New

York State maximum tax on personal services income. Said benefit was not included in the tax computations on the original 1978 New York State income tax return.

3. On December 10, 1979, the Audit Division issued a Statement of Audit Changes against petitioner giving the following explanations and computation of tax:

New York tax has been computed based on Maximum Tax for the year 1978 as requested in the IT-113X submitted.

When a professional football player performs services both within and without New York State any compensation received for that service is allocated to New York State based on the number of days played within New York State over the total number of days played. Therefore, both wage income and bonus income is allocated to New York State based on this allocation.

$$\text{Wages } \frac{9}{16} \times \$44,107.00 = \$24,810.00$$

$$\text{Bonus } \frac{9}{16} \times \$55,000.00 = \$30,938.00$$

Section 685(c) penalty has been assessed for underestimation of estimated tax.

COMPUTATION:

Total Wages	\$24,810.00
Bonus	30,938.00
Total New York Income	<u>\$55,748.00</u>
Limitation Percentage:	$\frac{\$ 55,748.00}{\$102,857.00} = 54.2\%$
Itemized Deductions \$6,452.00 x 54.2%	<u>3,497.00</u>
Balance	<u>\$52,251.00</u>
Exemption \$650.00 x 54.2%	<u>352.00</u>
Corrected New York Taxable Income	<u>\$51,899.00</u>
Tax From Tax Rate Schedule	\$ 6,044.85
Less: Maximum Tax Benefit	<u>816.97</u>
Corrected New York Tax	<u>\$ 5,227.88</u>
Tax Previously Paid	<u>4,418.00</u>
PERSONAL INCOME TAX DUE	<u>\$ 809.88</u>
Section 685(c) Penalty	\$ 76.39

Accordingly, the Audit Division issued a Notice of Deficiency for 1978 on May 21, 1980, in the amount of \$809.88 in personal income tax, plus \$150.63 in interest and penalty, for a total due of \$960.51.

4. Petitioner was a resident of Florida and attended the University of Florida. During his collegiate career he was a member of the university's football team. After graduation, and while still a resident of Florida, he was approached by the Buffalo Bills' professional football team. In order to induce petitioner to sign a contract with them, they offered to pay him a \$55,000.00 bonus for signing. This money was paid to petitioner in Florida.

5. The rider that was attached to petitioner's National Football League Player Contract provided in part that:

"As additional consideration for the execution of the contract above referred to and for the agreement of the player to report for play and practice with the club, and to perform all of the things required by him to be performed under said contract, the club agrees to pay the player the sum of \$55,000.00. By the execution hereof, the player acknowledges receipt of said sum of \$55,000.00 from the club and agrees to report and play football for the club, or its assignee, and to perform all things required by him to be performed under said contract; it is distinctly understood that the additional sum specified in this paragraph shall be paid for the year 1978 only, and shall not be deemed to be part of the salary for the year 1978 as specified in paragraph 5 of said contract; neither shall such bonus be included as salary should the club exercise its option on the Player's services for any succeeding season.

In the event the player either fails to report, to practice with or play for said club, or leaves the club without its consent, then, upon demand by the club, the Player shall be obligated to repay to the club said sum of \$55,000.00."

6. Petitioner argued that the signing bonus was received solely "for the execution of the contract" and "for the agreement" of Scott R. Hutchinson and that it was not received for services.

7. Petitioner further argued that this money was paid to him for nothing more than signing the contract; that he would have received the money regardless of him making the team or performing any services in the State of New York; that the bonus was not received as compensation for services provided to the Buffalo Bills. In support of his arguments, petitioner submitted a copy of Federal Form 1099-Misc. which indicated Amount - \$55,000.00, Source-Signing Bonus.

CONCLUSIONS OF LAW

A. That the payment of the bonus by Buffalo Bills, Inc. was to induce the petitioner to play on the club's team. The contract was the instrument by which petitioner's services were obtained. That the site where the contract was signed or where the bonus was received is immaterial.

B. That the \$55,000.00 payment to petitioner, Scott R. Hutchinson, was paid to him in accordance with the provisions of his employment contract and was compensation paid in consideration for services to be performed by him. Therefore, said bonus payment is allocable as New York source income in the same manner as is his salary income. The bonus payment in 1978 was connected with and was derived from New York sources as allocated by the Audit Division, in accordance with the meaning and intent of section 632 of the Tax Law.

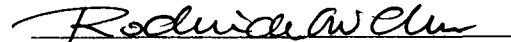
C. That the Claim for Refund received on May 31, 1979 and the petition of Scott R. Hutchinson are denied and the Notice of Deficiency issued on May 21,

1980 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

MAY 06 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER