

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph M. Kraft : 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 :
1977.

State of New York
County of Albany

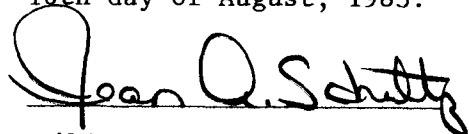
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of August, 1983, she served the within notice of Decision by certified mail upon Joseph M. Kraft, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph M. Kraft
85 East End Ave.
New York, NY 10028

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 August, 1983.


Joan Q. Schutt

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 204


Connie A. Hagelund

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

August 10, 1983

Joseph M. Kraft
85 East End Ave.
New York, NY 10028

Dear Mr. Kraft:

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 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	:	
JOSEPH M. KRAFT	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

Petitioner, Joseph M. Kraft, 85 East End Avenue, New York, New York 10028, 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 1977 (File No. 29178).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 17, 1982 at 10:30 A.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed the adjustment to income claimed by petitioner for alimony payments made to his former spouse.

FINDINGS OF FACT

1. Petitioner herein, Joseph M. Kraft, changed his domicile and residence from the State of New Jersey to the State of New York effective December 1, 1977. To reflect this change in resident status, petitioner timely filed a 1977 New York State Income Tax Nonresident Return covering the period of his nonresidence and a 1977 New York State Income Tax Resident Return covering the period of his residence.

2. On his 1977 New York State nonresident income tax return petitioner claimed an adjustment to income of \$10,185.00 for alimony payments made to his former spouse. Petitioner's former spouse was, during the year at issue, a resident of the State of New Jersey and she included said alimony payments as income on her 1977 New Jersey income tax return.

3. On August 31, 1979, the Audit Division issued a Notice of Deficiency to petitioner for the year 1977, asserting that additional New York State personal income tax of \$1,601.93 was due, plus interest of \$187.27, for a total due of \$1,789.20. The Notice of Deficiency was premised on a Statement of Audit Changes dated June 28, 1978 wherein the Audit Division disallowed, to the extent relevant herein, the \$10,185.00 adjustment to income claimed on petitioner's 1977 New York State nonresident income tax return. The explanation given on the Statement of Audit Changes was as follows:

"Alimony payments reported as adjustments on the Federal return may not be included in computing the New York income of a nonresident."

4. During the period that petitioner was a nonresident of New York State, January 1, 1977 to November 30, 1977, he earned total wage income of \$51,755.75, of which \$47,258.71 was derived from New York State sources. Total income earned by petitioner in his nonresident period consisted almost exclusively of the \$51,755.75 of wage income.

5. Petitioner argued that the alimony he was required to pay his former spouse during his period of nonresidence was directly related to and connected with his employment and, for this reason, said payments are properly considered as being derived from or connected with an occupation carried on in New York State.

CONCLUSIONS OF LAW

A. That the New York adjusted gross income of a resident individual is his Federal adjusted gross income for that year, subject to the modifications specified by section 612 of the Tax Law.

B. That the adjusted gross income of a nonresident individual is defined by section 632(a)(1) of the Tax Law as the net amount of income, gain, loss and deduction entering into his Federal adjusted gross income, derived from or connected with New York sources. Income and deductions from New York sources is defined by subdivision (b) of the same section, as follows:

"(1) 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 carried on in this state."

C. That alimony is not a deduction attributable to a business, trade, profession or occupation carried on by petitioner in this state within the meaning and intent of section 632(b)(1)(B) of the Tax Law.

D. That the petition of Joseph M. Kraft is denied and the Notice of Deficiency dated August 31, 1979 is sustained, together with such additional interest as may be lawfully due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 10 1983


PRESIDENT


COMMISSIONER

Commissioner Friedlander dissents in accordance with his appended dissents in the matters of Lance J. Friedsam and Steven M. Goldring dated March 17, 1982 and November 9, 1982, respectively.


COMMISSIONER