

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Nosrat E. Naftchi & Joyce C. Naftchi :
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 1978 and 1979. :
_____ :

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 21st day of October, 1983, she served the within notice of Decision by certified mail upon Nosrat E. Naftchi & Joyce C. Naftchi, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

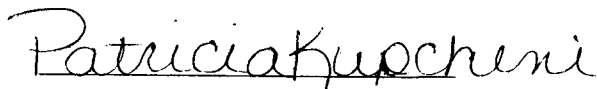
Nosrat E. Naftchi & Joyce C. Naftchi
389 Forest Ave.
Teaneck, NJ 07666

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
21st day of October, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Nosrat E. Naftchi & Joyce C. Naftchi :
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 1978 and 1979. :
_____:

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 21st day of October, 1983, she served the within notice of Decision by certified mail upon Paul Falk the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul Falk
16 Leach St.
Lynbrook, NY 11563

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
21st day of October, 1983.

Connie A. Hagelund

Patricia Kupcheni

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

October 21, 1983

Nosrat E. & Joyce C. Naftchi
389 Forest Ave.
Teaneck, NJ 07666

Dear Mr. & Mrs. Naftchi:

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 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
Paul Falk
16 Leach St.
Lynbrook, NY 11563
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
NOSRAT E. NAFTCHI and JOYCE C. NAFTCHI	:	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 1978 and 1979.	:	

Petitioners, Nosrat E. Naftchi and Joyce Naftchi, 389 Forest Avenue, Teaneck, New Jersey 07666, 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 1978 and 1979 (File No. 33630).

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 January 13, 1983 at 1:15 P.M., with all briefs to be submitted by February 12, 1983. Petitioners appeared by Paul Falk. The Audit Division appeared by Paul B. Coburn, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether days worked at home by petitioner Nosrat E. Naftchi can be considered as days worked outside New York State and New York City for purposes of allocating wage income to sources within and without the State and City.

FINDINGS OF FACT

1. Petitioners, Nosrat E. Naftchi and Joyce C. Naftchi¹, filed income tax returns as nonresidents of the State and City of New York for the years 1978 and 1979. On his 1978 return, petitioner reported wage income of \$41,839.80 received from the New York University Medical Center (hereinafter "NYU"). Petitioner allocated the NYU wage income to New York State sources based on a percentage determined by placing the total number of days worked within the State (140) over the total number of working days (247). Petitioner's 1978 New York City nonresident tax return reported the entire NYU wage income as being derived from New York City sources with no allocation to out of City sources. Petitioner's 1979 New York State return reported NYU wage income of \$45,209.49 and said amount was allocated to New York State sources based on 136 days worked in the State over 240 total working days. The 1979 New York City return reported the NYU wages as being derived entirely from New York City sources with no allocation to sources outside the City.

2. On December 5, 1980, the Audit Division issued a Statement of Audit Changes to petitioner for the years 1978 and 1979, wherein his claimed allocation of NYU wage income to New York State sources was recomputed disallowing all days worked at home as days worked outside New York State. For the year 1978 the allocation percentage to New York State was increased from 56.68 percent (140/247) to 88.60 percent (202/228) and for 1979 the allocation percentage was increased from 56.67 percent (136/240) to 82.38 percent (187/227). The Audit Division, for New York City purposes, allocated the NYU wage income to City sources on the same basis as wages were allocated for State purposes.

¹ Joyce C. Naftchi is involved in this proceeding due solely to the filing of joint income tax returns with her husband. Accordingly, the use of the term petitioner hereafter shall refer solely to Nosrat E. Naftchi.

3. In accordance with the aforementioned Statement of Audit Changes, the Audit Division, on March 11, 1981, issued a Notice of Deficiency to petitioner for the years 1978 and 1979. Said Notice asserted that additional personal income tax of \$1,986.83 was due, together with interest of \$232.54, for a total due of \$2,219.37.

4. During 1978 and 1979 petitioner, a physician, was employed solely by NYU as a professor. Petitioner performed the major portion of his duties for NYU at its offices in New York City. As part of petitioner's duties for NYU he was expected to both author and edit articles for publication in various medical books and journals. The majority of petitioner's time during normal working hours at NYU was consumed by duties other than working on the books and journals. Accordingly, petitioner worked at home at night and on weekends primarily on the articles he wrote and edited. Other than wages, petitioner received no additional form of compensation from NYU for his writing and editing activities.

5. Petitioner did not personally appear at the hearing held herein to offer his testimony, however, his representative did present documentary evidence to support that Dr. Naftchi attended a winter conference on brain research in Keystone, Colorado from January 21, 1978 to January 29, 1978. The nine (9) days worked outside New York State from January 21, 1978 to January 29, 1978 were not considered by the Audit Division in its allocation of petitioner's 1978 wage income to sources within and without the State and City. During the period January 21, 1978 through January 29, 1978 there are a total of four (4) Saturdays and Sundays.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner at his home in New Jersey for NYU during 1978 and 1979 were performed there by reason of his own convenience and not for the employer's necessity. Accordingly, the days worked at home by petitioner cannot be considered as days worked outside New York State and New York City for income allocation purposes within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16 and section U46-2.0(a)(2) of Title U and 20 NYCRR 295.2 and 20 NYCRR Appendix 20 §4-4(a) and (b). See: Page v. State Tax Commission, 46 A.D.2d 341, Simms v. Procaccino, 47 A.D.2d 149 and Wheeler v. State Tax Commission, 72 A.D.2d 878.

B. That in accordance with Finding of Fact "5", supra, the allocation of NYU wage income for the year 1978 to State and City sources is to be modified by allowing petitioner an additional nine (9) days worked outside the State and City. That total nonworking days for the year 1978 are to be reduced by four (4) days, since there are a total of four (4) Saturdays and Sundays included in the nine (9) additional days herein allowed as days worked outside the State and City.

C. That the petition of Nosrat E. Naftchi and Joyce C. Naftchi is granted to the extent indicated in Conclusion of Law "B", supra; that the Audit Division is directed to recompute the Notice of Deficiency dated March 11, 1981 consistent with the decision rendered herein; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

OCT 21 1983

STATE TAX COMMISSION

Richard A. Cline
PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER