

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Carl & Rosalie Proia : 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 Years :
1977 & 1978.

State of New York
County of Albany

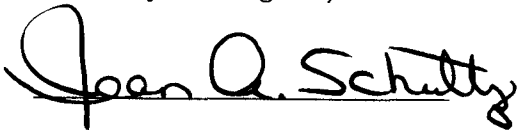
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of August, 1983, she served the within notice of Decision by certified mail upon Carl & Rosalie Proia, the petitioner in the within proceeding,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

Carl & Rosalie Proia
5825 Collins Ave.
Miami Beach, FL 33140

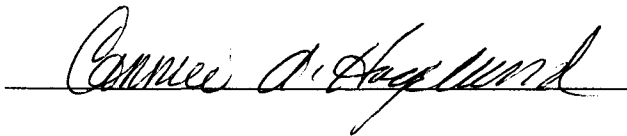
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
§ 205.10



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Carl & Rosalie Proia :

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 Years :
1977 & 1978.

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 Arthur W. Robeson the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur W. Robeson
Miceli and Robeson
1 East Main St.
Rochester, NY 14614

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
10th day of August, 1983.

Connie A. Hagelund

Jean A. Schilly

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

August 10, 1983

Carl & Rosalie Proia
5825 Collins Ave.
Miami Beach, FL 33140

Dear Mr. & Mrs. Proia:

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
Arthur W. Robeson
Miceli and Robeson
1 East Main St.
Rochester, NY 14614
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CARL PROIA AND ROSALIE PROIA : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Years 1977 and 1978. :

Petitioners, Carl Proia and Rosalie Proia, 5825 Collins Avenue, Miami Beach, Florida 33140, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1977 and 1978 (File No. 31892).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 18, 1982 at 1:15 P.M. Petitioners appeared by Arthur W. Robeson, C.P.A. The Audit Division appeared by Paul B. Coburn, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed the adjustment to income claimed by petitioners for the years 1977 and 1978 for alimony payments made to Mr. Proia's former spouse.

FINDINGS OF FACT

1. Petitioners herein, Carl Proia and Rosalie Proia¹, filed New York State nonresident income tax returns for the years 1977 and 1978. On each of

¹ Rosalie Proia is involved in this proceeding due solely to filing of joint tax returns with her husband. Accordingly, the use of the term petitioner hereinafter shall refer to only Carl Proia.

said returns petitioner claimed an adjustment to income of \$17,000.00 for alimony payments made to his former spouse.

2. On March 20, 1981 the Audit Division issued a Notice of Deficiency to petitioner for the years 1977 and 1978, asserting that additional personal income tax of \$4,503.22 was due, together with penalty and interest of \$1,101.50, for a total of \$5,604.72. Penalty was assessed pursuant to section 685(c) of the Tax Law for underestimation of personal income tax.

3. The aforementioned Notice of Deficiency was based on a Statement of Audit Changes dated August 12, 1980 wherein the audit action taken was explained via the following statement:

"The deduction to income for alimony payments is denied as it is not an expense connected with the income derived from New York sources."

4. During the entire years of 1977 and 1978 petitioner was a nonresident of New York State. In each of said years petitioner made alimony payments totaling \$17,000.00 to his former spouse. Said alimony payments were made pursuant to a divorce decree issued by a New York State court. Petitioner's former spouse was a resident of New York for the years 1977 and 1978.

5. During the years 1977 and 1978, the major portion of petitioner's income was generated from the operation of an apartment complex located in Rochester, New York known as Hill Court Apartments. The monthly alimony payments made by petitioner to his former spouse were issued from the Hill Court Apartments' checking account and said checks were charged to petitioner's drawing account.

6. Petitioner argued that the alimony he was required to pay his former spouse was tied into and connected with his primary source of income, i.e. the operation of an apartment complex located within New York State. Petitioner

asserts that the alimony payments were derived from or connected with a business, trade, profession or occupation which was carried on within New York State.

7. Petitioner did not argue nor was any evidence presented with respect to the penalty asserted due under section 685(c) of the Tax Law for underestimation of tax.

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 Carl Proia and Rosalie Proia is denied and the Notice of Deficiency dated March 20, 1981 is sustained, together with such additional penalty and interest as may be lawfully due and owing.

DATED, Albany, New York

STATE TAX COMMISSION

AUG 10 1983

~~ACTING~~ PRESIDENT

Richard A. Cline

Francis R. Koenig
COMMISSIONER

COMMISSIONER

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

Mark J. Smith
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

CLAIM CHECK NO.

267690

WORLD

8/11/82

NOTICE

PRICE

CERTIFIED

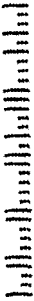
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MAIL

Carl & Rosalie Prodia
5825 Collins Ave.
Miami Beach, FL 33140

20 AUG

1983



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

August 10, 1983

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Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Arthur W. Robeson
Miceli and Robeson
1 East Main St.
Rochester, NY 14614
Taxing Bureau's Representative

STATE TAX COMMISSION

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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.

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DATED, Albany, New York

STATE TAX COMMISSION

AUG 10 1983

~~LETTER~~

Rodica Owler
PRESIDENT

Francis R. Koenig
COMMISSIONER

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.

Mark J. Friedlander
COMMISSIONER