

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Harold H. & Bette M. Tara	:	
for Redetermination of a Deficiency or for Refund	:	AFFIDAVIT OF MAILING
of Personal Income Tax under Article 22 of the Tax	:	
Law and New York City Non-Resident Earnings Tax	:	
under Chapter 46, Title U of the Administrative	:	
Code of the City of New York 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 4th day of February, 1983, he served the within notice of Decision by certified mail upon Harold H. & Bette M. Tara, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harold H. & Bette M. Tara  
48 Brookwood Dr.  
Wayne, NJ 07470

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  
4th day of February, 1983.

David Parchuck

Ann P. Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
Harold H. & Bette M. Tara	:	
AFFIDAVIT OF MAILING		
for Redetermination of a Deficiency or for Refund	:	
of Personal Income Tax under Article 22 of the Tax	:	
Law and New York City Non-Resident Earnings Tax	:	
under Chapter 46, Title U of the Administrative	:	
Code of the City of New York for the Year 1978.	:	

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State of New York  
County of Albany

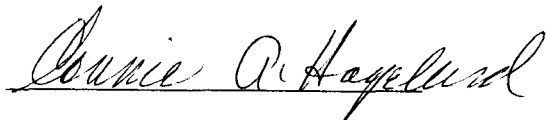
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of February, 1983, he served the within notice of Decision by certified mail upon Salvatore M. Zambito the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Salvatore M. Zambito  
9 Marc Rd.  
Wayne, NJ 07470

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  
4th day of February, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

February 4, 1983

Harold H. & Bette M. Tara  
48 Brookwood Dr.  
Wayne, NJ 07470

Dear Mr. & Mrs. Tara:

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 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  
Salvatore M. Zambito  
9 Marc Rd.  
Wayne, NJ 07470  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HAROLD H. AND BETTE M. TARA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and New York City Non-Resident	:	
Earnings Tax under Chapter 46, Title U of the	:	
Administrative Code of the City of New York	:	
for the Year 1978.	:	

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Petitioners, Harold H. Tara, and his wife Bette M. Tara, 48 Brookwood Drive, Wayne, New Jersey 07470, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and New York City non-resident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1978 (File No. 29448).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 11, 1982, at 9:15 A.M. Petitioners appeared by Salvatore M. Zambito, C.P.A. The Audit Division appeared by Paul B. Coburn, Esq., (Lawrence Newman, Esq., of counsel).

ISSUE

Whether petitioner Harold H. Tara properly allocated his wage income on the basis of days worked within and without New York State.

FINDINGS OF FACT

1. Petitioners, Harold H. Tara and Bette M. Tara, were residents of the State of New Jersey.

2. Petitioner Harold H. Tara is a medical doctor, practicing through a professional service corporation organized under the laws of the State of New

York. Its principal office is in Queens County, New York. Dr. Tara's specialty is urology.

3. Mrs. Tara was a housewife and neither had nor is alleged to have had any taxable New York State income for 1978, the tax year in issue herein.

4. The corporation is not authorized to do business in the State of New Jersey, but Dr. Tara is enrolled to practice medicine in the State of New Jersey and it is his contention that he does practice medicine in New Jersey as an employee of the New York professional corporation.

5. On their IT-203/209 New York State Income Tax Return, Dr. Tara allocated days worked outside the State of New York. His allocation was based on his claim that a major portion of his income from the corporation was derived from outside New York sources.

6. On January 30, 1980, the Audit Division issued a Notice of Deficiency against petitioners for the year 1978 as follows:

Additional Tax Due or Tax Deficiencies	\$5,800.01
Total Penalty and/or Interest	390.22
Amount Due	<u>\$6,190.23</u>

7. The Audit Division gave the following explanation for issuing its Statement of Audit Changes dated October 31, 1979:

"Information submitted does not indicate that any of your services for the professional corporation were required to be performed outside New York State. Corporation returns were submitted for New York State and New York City but not for New Jersey.

Days worked at home are not considered a proper basis for the allocation of income to outside New York State.

Income from intangibles and gains and losses from the sale of intangible personal property are not reportable to New York State by nonresidents. Capital loss of \$2,898.72 is disallowed.

Rental income or losses only from property located within New York State is includible in your New York income.

Tax was withheld for New York State tax purposes by the Veterans Administration on compensation of \$2,554.93 paid to you. Therefore, the source of compensation is considered New York State and is reportable.

Section 612(b)(8) of the New York State Tax Law requires a shareholder of a professional corporation to add to his Federal adjusted gross income the amount of taxes paid by the corporation for old age, survivors and disability insurance on FICA wages for the calendar year of the shareholder. This does not include payment for Hospital (Medicare) Insurance."

8. In addition to being on staff at various New Jersey State institutions, Dr. Tara practices out of his private offices in New Jersey. His private office suite which cost \$30,000.00 to set up in 1972 consisted of separate professional offices for x-ray facilities, lead lining, two treatment rooms, waiting room, regular nurses' station and a consultation room with a separate professional telephone.

9. Dr. Tara maintained that he worked thirty-two hours per week in New Jersey rendering services to various hospitals and nursing homes and eight hours per week in New York. Accordingly, he allocated 80 percent of his professional income to New Jersey sources.

10. Dr. Tara did not offer to the Audit Division, nor did he offer at the hearing herein, any documentary evidence supporting the basis for his allocation of income.

11. Notwithstanding Dr. Tara's inability or unwillingness to furnish documentary evidence supporting his allocation of income, he nevertheless refused the Audit Division's offer of permitting an allocation of 50 percent to New Jersey sources.

12. Dr. Tara's professional corporation did not pay any New Jersey taxes.

13. Dr. Tara was paid a salary by the professional corporation for all of the services rendered herein and issued a wage and tax statement for same.

CONCLUSIONS OF LAW

A. That petitioner Harold H. Tara failed to sustain his burden of proof imposed by section 689(e) of the Tax Law and section U46-39.0(e) of Chapter 46, Title U of the New York City Administrative Code to show that he rendered services outside this state during 1978. Therefore, his allocation of wage income to sources outside New York State is denied.

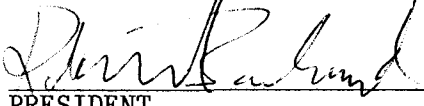
B. That the petition of Harold H. Tara and Bette M. Tara is denied and the Notice of Deficiency issued on January 30, 1980 is sustained.

DATED: Albany, New York

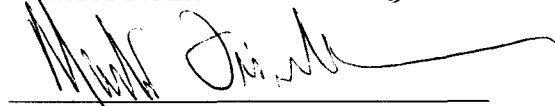
FEB 04 1983

STATE TAX COMMISSION

ACTING

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER