

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Morton A. & Grace Waldman

: 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

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 Morton A. & Grace Waldman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morton A. & Grace Waldman
56 Frontier Rd.
Cos Cob, CT 06807

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 A. Hegland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Morton A. & Grace Waldman :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Tax under Article 22 of the Tax Law for the :
Year 1977.

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 Harvey P. Stein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harvey P. Stein
25 S. Greeley Ave.
Chappaqua, NY 10514

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

Conrad C. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Morton A. & Grace Waldman
56 Frontier Rd.
Cos Cob, CT 06807

Dear Mr. & Mrs. Waldman:

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
Harvey P. Stein
25 S. Greeley Ave.
Chappaqua, NY 10514
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MORTON A. WALDMAN and GRACE WALDMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

Petitioners, Morton A. Waldman and Grace Waldman, 56 Frontier Road, Cos Cob, Connecticut 06807, 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. 30672).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 14, 1982 at 2:45 P.M. Petitioner Morton A. Waldman appeared with Harvey P. Stein, Esq. The Audit Division appeared by Paul B. Coburn, Esq., (Irving Atkins, Esq., of counsel).

ISSUE

Whether days worked by petitioner Morton A. Waldman at his home in Connecticut constituted days worked without New York State for income allocation purposes.

FINDINGS OF FACT

1. Morton A. Waldman (hereinafter "petitioner") and Grace Waldman, timely filed a joint New York State Income Tax Nonresident Return for the year 1977 whereon petitioner allocated 20 percent of his salary income derived from Morton A. Loring, D.D.S. and Morton A. Waldman, D.D.S., P.C. to sources without New York State.

2. On May 21, 1979, the Audit Division issued a Statement of Audit Changes wherein petitioner's claimed allocation was disallowed on the basis that "Days worked at home are not considered a proper basis for the allocation of income to outside New York State." Additionally, an adjustment was made increasing petitioner's reported modification made pursuant to sections 612(b)(7), 612(b)(8) and 612(b)(9) of the Tax Law; however, since said adjustment was neither raised as an issue nor contested during the hearing, it is therefore deemed not at issue herein. Accordingly, a Notice of Deficiency was issued against petitioners on March 13, 1980 asserting additional personal income tax of \$2,069.36, plus interest of \$335.79, for a total due of \$2,405.15.

3. During the year at issue, petitioner was engaged with an associate in the practice of general dentistry. They operated as a professional service corporation and practiced from an office located at 280 Mamaroneck Ave., White Plains, New York.

4. Petitioner worked in the White Plains office a full five day work week. His daily hours were from 8:00 A.M. to 5:00 P.M. On occasion, he arrived a little earlier or departed a little later. His office hours were devoted solely to hands on patient dentistry.

5. Petitioner's claimed allocation was with respect to work done in his Connecticut home. Such work included diagnostic workups and X-Ray readings, recording of patient treatment plans, submission of insurance forms, drafting of correspondence, reconciling bills and invoices, payment of bills and preparation of bookkeeping records and payroll tax forms.

6. Petitioner contended that the work performed at his home was done for the convenience of his employer. He argued that he was unable to perform these duties at his White Plains office since his office space was readily

accessible to patients and employees and accordingly offered no privacy. Also, his time spent during the course of a day at the office was devoted to dentistry, leaving little time for him to devote to such other duties.

CONCLUSIONS OF LAW

A. That with respect to the earnings of nonresident employees and officers, any allowance claimed for days worked outside of the State must be based upon the performance of services which of necessity --- as distinguished from convenience --- obligate the employee to out-of-state duties in the service of his employer (20 NYCRR 131.16).

B. That the services performed by petitioner at his Connecticut residence were so performed at said location out of petitioner's own necessity and convenience and not by reason of an obligation based on his employer's necessity for such services to be performed out-of-state. Accordingly, those days worked by petitioner at his Connecticut residence constituted days worked within New York State for income allocation purposes pursuant to section 632(c) of the Tax Law and 20 NYCRR 131.16. (Matter of Gross v. State Tax Commission, 62, A.D.2d 1117).

C. That the petition of Morton A. Waldman and Grace Waldman is denied and the Notice of Deficiency dated March 13, 1980 is hereby sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

MAY 06 1983

STATE TAX COMMISSION

Rodriguez G. Cline
PRESIDENT
Frankie R. Koenig
COMMISSIONER
Mark J. Dineen
COMMISSIONER