

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
Gerald & Harriet William : 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 :  
1975.

---

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 7th day of October, 1983, she served the within notice of Decision by certified mail upon Gerald & Harriet William, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald & Harriet William  
4602 Bayberry Lane  
Tamarac, FL 33319

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  
7th day of October, 1983.

Lusan Powell

Connie A. Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
Gerald & Harriet William : 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 :  
1975.

---

State of New York  
County of Albany

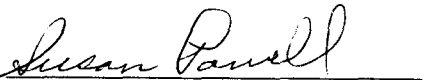
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 7th day of October, 1983, she served the within notice of Decision by certified mail upon Eugene L. Winston the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eugene L. Winston  
Suite 2E10, 3000 Marcus A  
Lake Success, NY 11042

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  
7th day of October, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

October 7, 1983

Gerald & Harriet William  
4602 Bayberry Lane  
Tamarac, FL 33319

Dear Mr. & Mrs. William:

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  
Eugene L. Winston  
Suite 2E10, 3000 Marcus A  
Lake Success, NY 11042  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
GERALD WILLIAM and HARRIET WILLIAM	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

---

Petitioners, Gerald William and Harriet William, 4602 Bayberry Lane, Tamarac, Florida 33319, 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 1975 (File No. 23028).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 21, 1981 at 1:15 P.M. Petitioners appeared by Eugene L. Winston, CPA and Jack Mitnick, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner Gerald William, a nonresident taxpayer working for a New York corporation at his home in Florida, properly allocated his wages based on the number of days worked in and outside the State of New York.

FINDINGS OF FACT

1. Petitioners, Gerald William and Harriet William filed part-year resident and nonresident returns for 1975. The resident return reported the period of residency from January 1, 1975 to February 1, 1975. On Schedule A-1, "Allocation of wage and salary income to New York State" of the nonresident return, they claimed that out of a total of 208 days worked during the remaining

eleven months in 1975, petitioner Gerald Williams worked 148 days outside New York State and 60 days within New York State. On that basis, petitioners allocated to New York \$26,442.00 of petitioner Gerald William's total nonresident period income which he had calculated to be \$91,667.00 for 1975. Petitioners claimed a refund on their resident and nonresident returns of \$165.00 and \$8,378.00, respectively.

2. On February 1, 1978, the Audit Division issued a Statement of Audit Changes<sup>1</sup> against petitioners, Gerald William and Harriet William, revising their itemized deductions and exemptions between returns and considering the nonresident period income to be \$91,667.00 for New York State purposes, on the grounds that:

"Days worked at home do not form a proper basis for the allocation of income by a nonresident. Any allowance claimed for days worked outside of New York State must be based upon the performance of services which, because of the necessity of the employer, obligate the employee to out of State duties in the service of his employer. Such duties are those which, by their very nature, cannot be performed in New York State.

The nature of the services you rendered for the KEC Corporation, did not necessitate the State of Florida or your home as the place for performance. Therefore, allocation of wages has been disallowed.

Itemized deductions and exemptions have been apportioned on the basis of months covering the period of the return."

Accordingly, a Notice of Deficiency was issued to petitioners on April 4, 1978, for additional personal income tax due of \$1,380.14.

3. All of petitioner Gerald William's salary income of \$100,000.00 for 1975 was received from KEC Corporation, Inc., a New York corporation.

---

<sup>1</sup> The refunds noted in Finding of Fact "1" were not allowed by the Audit Division. Rather, the total New York State tax withheld claimed by petitioners was allowed against the tax computed in the Statement of Audit Changes.

4. Petitioner Gerald William was the sole stockholder and president of KEC Corporation. Petitioner Gerald William was also its sole employee after February 1, 1975 other than a bookkeeper in Ft. Lauderdale, Florida.

5. In June 1973, petitioner Gerald William bought an interest in Peerless Electric, Inc. of 739 N.E. 40th Court, Ft. Lauderdale, Florida. At that time, he began the liquidation of KEC Corporation of 107 Northern Boulevard, Great Neck, New York. KEC Corporation gave up its offices in August of 1974 and operated from the offices of Spiral Construction Corp. at the same 107 Northern Boulevard address. The corporation paid no rent but kept its telephone at Spiral's office until January 31, 1975 when the petitioners moved to 4602 Bayberry Lane, Tamarac, Florida. Effective January 31, 1975 the Great Neck New York Post Office transferred all mail of KEC Corporation to the petitioners' Florida home. The petitioner Gerald William worked out of his home in Florida from that date on and the corporation had no other offices.

6. KEC Corporation had been in the electrical contracting business prior to petitioner moving to Florida. Petitioner Gerald William performed the following duties at his Florida home for KEC Corporation:

- a. Correspondence by letter and telephone with the State University Construction Fund at Stonybrook University and Albany.
- b. Preparation of litigation with Mid Hudson Electric Company.
- c. Follow up on completion guarantees and payments from H. Sand and Company.
- d. Correspondence, supervision and guarantees for the State of New York, O.G.S. for work completed for the Emergency Power System in Albany, N.Y.
- e. Preparation of Change Orders and correspondence with the Architect and SUCF regarding Contract #32-233.
- f. Correspondence and telephone communications with subcontractors of KEC Corporation.

g. Supervision of the payment of the various taxes payable to the State of New York and the Federal Government.

h. Supervision of the necessary insurances such as Property Damage, Unemployment, Disability, FICA and Bonds.

Petitioner Gerald William submitted a notarized statement, dated April 19, 1976, indicating that after leaving New York on January 31, 1975, he returned on the following dates for conferences with subcontractors and others:

	Conferences
April 10 to April 13, 1975	2 working days
May 5 and May 6, 1975	2 working days
June 18 and June 19, 1975	2 working days
July 31 and August 1, 1975	2 working days
Sept. 22 and Sept. 23, 1975	2 working days

However, petitioners' New York nonresident income tax return and their perfected petition indicated that 60 days were worked within New York State during the period February 1 through December 31, 1975. No explanation was offered with respect to this discrepancy.

7. After moving to Florida, with the exception of the days worked by petitioner Gerald William within New York State, all the business of KEC Corporation was conducted and managed by petitioner Gerald William from the office in his home in Tamarac, Florida.

8. The Audit Division contended that the mail drop at the Great Neck, New York Post Office and/or the offices of Eugene L. Winston, CPA, where the corporation tax return for 1975 for KEC Corporation was sent, should be considered as the New York office of KEC Corporation for the purpose of allocation of income, even though the petitioner performed no duties at either location.

9. During the year at issue, all income received by the KEC Corporation was derived from or connected with New York sources.

CONCLUSIONS OF LAW

A. That the New York adjusted gross income of a nonresident individual includes compensation for personal services rendered as an employee to the extent that such services were rendered within this State [20 NYCRR 131.4(b)].

B. That during the year in issue, Personal Income Tax Regulation 20 NYCRR 131.16 provides, in part, as follows:

"If a nonresident employee (including corporate officers...) performs services for his employer both within and without the State, his income derived from New York sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within the State bears to the total number of working days employed both within and without the State....However, 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."

C. That after January 31, 1975 the KEC Corporation did not maintain an office or other place where its affairs were systematically and regularly carried on within New York State. The KEC Corporation did maintain an office in Florida at the home of petitioner Gerald William where it systematically and regularly carried on its affairs. Accordingly, the days worked by petitioner Gerald William at his Florida residence for the KEC Corporation during the period February 1 through December 31, 1975 were so worked because of business necessity and are properly considered as days worked outside New York State within the meaning and intent of 20 NYCRR 131.16.

D. That petitioners have failed to sustain the burden of proof as required by section 689(e) of the Tax Law, to show that they are entitled to an allocation of income based on 10 days worked in New York State rather than 60 days as shown in their tax return and perfected petition. Petitioners are entitled to the allocation of petitioner Gerald William's salary from the KEC Corporation reported on their returns as originally filed (see Finding of Fact "1" supra).



E. That the petition of Gerald William and Harriet William is granted to the extent provided herein. The Audit Division is directed to cancel the Notice of Deficiency, dated April 4, 1978, and to authorize a refund of any overpayment that may exist.

DATED: Albany, New York  
OCT 07 1983

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER