

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Fred Baruch	:	
for Redetermination of a Deficiency or Revision	:	AFFIDAVIT OF MAILING
of a Determination or Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1980.	:	

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of July, 1984, he served the within notice of Decision by certified mail upon Fred Baruch, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fred Baruch
P.O. Box 119
Grand Central Station
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
31st day of July, 1984.

David Parchuck

James A. Chapman
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 31, 1984

Fred Baruch
P.O. Box 119
Grand Central Station
New York, NY 10017

Dear Mr. Baruch:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRED BARUCH	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1980.	:	

Petitioner, Fred Baruch, P.O. Box 119, Grand Central Station, New York, New York 10017, 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 1980. (File No. 38507).

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 January 9, 1984 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner is properly entitled to a resident tax credit for tax paid to the State of New Jersey on gambling winnings.

FINDINGS OF FACT

1. Fred Baruch (hereinafter petitioner) timely filed a New York State Income Tax Resident Return for the year 1980 whereon he reported gambling income of \$7,647.00. Gambling losses offsetting said income were claimed as an itemized deduction. On such return, petitioner reported wage income and business income from his activities as an accountant.

2. Petitioner filed a New Jersey Emergency Transportation Tax Nonresident Return for 1980 whereon he reported "gambling winnings" of \$4,251.00 derived from said State. The tax computed thereon of \$38.66 was paid on May 2, 1981.

3. On May 2, 1981, petitioner filed a Claim For Credit or Refund of Personal Income Tax whereon he claimed a resident tax credit of \$38.66. In conjunction therewith, he submitted a New York State Claim for Resident Tax Credit form, a Summary of Other Credits and Taxes schedule, and a copy of the aforestated New Jersey return.

4. On September 10, 1981, petitioner was issued notification that his claim for credit of \$38.66 was disallowed in full based on the following explanation:

"Under section 620 of the Tax Law, a resident credit is allowable in relation to compensation for personal services performed in another State, income from a business, trade or profession carried on in another State and income from the ownership of real or tangible personal property in another State.

Since no services were performed in New Jersey, no credit is being allowed."

5. On July 26, 1982, the Audit Division issued a formal notice of disallowance to petitioner wherein his claim of \$38.66 was denied in full.

6. Petitioner contended that his claim should be allowed since disallowance of such claim would constitute "double taxation".

CONCLUSIONS OF LAW

A. That section 620(a) of the Tax Law provides that:

"A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States, a political subdivision of such state or by the District of Columbia, upon income both derived therefrom and subject to tax under this article."

B. That 20 NYCRR 121.3(d), as in effect during the year at issue, provided that:

"The term 'income derived from sources within' another state or the District of Columbia is construed so as to accord with the definition of the term 'derived from or connected with New York sources' set forth in Part 131 in relation to the adjusted gross income of a nonresident individual. Thus, the resident credit is allowable for income tax imposed by another jurisdiction upon compensation for personal services performed in the other jurisdiction, income from a business, trade or profession carried on in the other jurisdiction and income from real or tangible personal property situated in the other jurisdiction. On the other hand, the resident credit is not allowed for tax imposed by another jurisdiction upon income from intangibles, except where such income is from property employed in a business, trade or profession carried on in the other jurisdiction."

C. That the New Jersey income tax was imposed on gambling income.

Accordingly, since such income did not constitute compensation for personal services performed in the other jurisdiction, income from a business, trade or profession carried on in the other jurisdiction or income from real or tangible personal property situated in the other jurisdiction, the resident tax credit is not allowable to petitioner pursuant to 20 NYCRR 121.3(d).


D. That the petition of Fred Baruch is denied and the formal notice of disallowance dated July 26, 1982 is hereby sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER