

STATE OF NEW YORK

STATE TAX COMMISSION

|  |   |                      |
|--|---|----------------------|
| In the Matter of the Petition                    | : |                      |
| of   | : |                      |
| Theodore L. & Sheila M. Cook                     | : |                      |
| 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 | : |                      |
| 1979.  | : |                      |

State of New York }

ss.:

County of Albany }

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 6th day of July, 1984, he served the within notice of Decision by certified mail upon Theodore L. & Sheila M. Cook, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Theodore L. & Sheila M. Cook  
81 Drum St.  
Ft. Covington, NY 12937

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  
6th day of July, 1984.

David Parchuck

James G. Hagedorn  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

July 6, 1984

Theodore L. & Sheila M. Cook  
81 Drum St.  
Ft. Covington, NY 12937

Dear Mr. & Mrs. Cook:

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

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| In the Matter of the Petition                  | : |          |
|  | : |          |
| of   | : |          |
|  | : |          |
| THEODORE L. COOK AND SHEILA M. COOK            | : | DECISION |
|  | : |          |
| for Redetermination of a Deficiency or for     | : |          |
| Refund of Personal Income Tax under Article 22 | : |          |
| of the Tax Law for the Year 1979.              | : |          |

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Petitioners, Theodore L. Cook and Sheila M. Cook, St. Regis Mohawk Reservation, 81 Drum Street, Fort Covington, New York 12937, 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 1979 (File No. 41948).

On November 28, 1983, petitioners waived a small claims hearing and consented to submission of this matter to the State Tax Commission. The following decision is rendered upon the file as presently constituted.

ISSUES

I. Whether petitioners were residents of New York State during the entire year 1979.

II. Whether petitioners properly reported the correct amount of Federal adjusted gross income on their New York State income tax return for the year 1979.

FINDINGS OF FACT

1. Petitioners, Theodore L. Cook and Sheila M. Cook, timely filed a New York State Income Tax Resident Return on Form IT-200 showing total New York income of \$5,375.37.

2. On February 17, 1982, as a result of a comparison of petitioners' Federal adjusted gross income as provided by the Internal Revenue Service and

their New York State total income reported on their State return, a Statement of Audit Changes was issued against petitioners showing personal income tax due of \$675.69, plus interest. Said statement was issued on the ground that petitioners' Federal adjusted gross income was \$18,541.00 and not the amount shown on petitioners' New York tax return of \$5,375.37. Accordingly, a Notice of Deficiency was issued on January 12, 1983.

3. On June 1, 1982, petitioners, Theodore Cook and Sheila Cook, submitted a letter and Form IT-209, New York State Income Tax Nonresident Return, on which they elected to report their respective incomes of \$4,471.29 and \$904.08 on a separate basis. Said return, although not designated an amended return, showed that (1) petitioners' address was St. Regis Mohawk Indian Reservation, 81 Drum Street, Fort Covington, New York; (2) no change of residence occurred in 1979; (3) their Federal adjusted gross income was \$23,821.09; and (4) salaries were their only source of income during 1979.

4. On August 10, 1982, the Audit Division sent petitioners a letter advising them that "full year residents of the State of New York are taxable on all income received throughout the year and are therefore required to fill out an IT-201, New York Resident Return". Form IT-201, with instructions, was sent to petitioners.

5. On January 26, 1983, petitioners filed a petition in which they claimed relief on the following grounds:

"We are filing these Petitions along with amended tax returns for 1979. At the time in 1979, we were confused about which forms to use. We hope the contents of this envelope will satisfy such deficiencies. Please note refunds due Us [sic] on enclosed returns equals the refund of \$231.58 sent to Us [sic] on March 3, 1980.

Enclosed find Taxation and Finance letter dated 1/12/83, also, 3 copies of completed Petition to the Tax Appeals Bureau. Following these are copies of refund check for 1979 of \$231.58 also, the envelope received in.

IT201 N.Y. State Income Taxx [sic] Resident Return for 1979  
Theodore Cook refund due is \$212.48, wage and tax statements attached.

IT201 N.Y. State Resident return for 1979 for Sheila M. Cook.  
Wage and tax statements attached. Refund due is \$19.10.

CR60.1 Schedule for Change of Resident Status attached to 1979  
IT203 Theodore L. Cook N.Y. State Non-Resident return.

Attached also wage and tax statement for out state earnings.  
Non-Resident earnings are stated on IT203 return."

The separate IT-201's mentioned above show total New York income for Theodore Cook of \$4,777.29 and for Sheila Cook of \$904.08. Form CR-60.1 filed by Theodore Cook shows resident period income of \$4,777.29 and nonresident period income of \$15,442.38, none of which was reported as income from New York sources.

6. The following withholding statements, all of which showed petitioner Theodore Cook's address as Fort Covington, New York, were submitted by petitioners for tax year 1979:

| <u>EMPLOYER</u>   | <u>STATE<br/>EMPLOYED</u> | <u>WAGES</u>       |
|---|---------------------------|--------------------|
| American Bridge Division, United States Steel Corporation | IN                        | \$ 870.20          |
| Harvey Construction Co., Inc.                             | NH                        | 1,520.55           |
| Perini Power Constructors, Inc.                           | NH                        | 6,919.60           |
| Shurtleff & Andrews, Inc.                                 | IN                        | 1,293.85           |
| American Bridge Division, United States Steel Corporation | KY                        | 2,695.34           |
| Cornell & Company, Inc.                                   | OH                        | 234.27             |
| The Oberle Jorde Co.                                      | OH                        | 1,713.87           |
| Baldwin Associates - Clinton                              | IL                        | 194.70             |
| Walsh Cons. Div. of Guy F. Atkins                         | NY                        | 4,471.29           |
| Bea Jay Manufacturing Co., Inc.                           | NY*                       | 904.08             |
| Walsh Cons. Div. of Guy F. Atkins                         | NY                        | 300.00             |
| TOTAL WAGES   |                           | <u>\$21,117.75</u> |

\* Issued to Sheila Cook

The record contains no information as to the discrepancy between total wages of \$21,117.75 and the amount of Federal adjusted gross income provided by the Internal Revenue Service of \$18,541.00.

7. The record herein does not disclose whether petitioner Theodore Cook paid income taxes to any state other than New York or that he maintained a permanent place of abode outside this State during 1979.

CONCLUSIONS OF LAW

A. That petitioners did not sustain their burden of proof imposed by section 689(e) of the Tax Law to show that they changed their status from resident to nonresident during 1979. Accordingly, petitioners are taxable as New York residents during the entire year 1979. As New York residents, petitioners New York total income is their Federal adjusted gross income subject to certain modification, none of which are applicable herein (section 612(a) of the Tax Law). Therefore, Mr. Cook's 1979 wages from his New York employers, as well as the 1979 wages from his out of state employers, are subject to New York income tax.

B. That petitioners did not sustain their burden of proof imposed by section 689(e) of the Tax Law to show that the amount of Federal adjusted gross income determined by the Audit Division was erroneous. Therefore, Federal adjusted gross income of \$18,541.00 is determined to be the correct total New York income.

C. That the petition of Theodore L. Cook and Sheila M. Cook is denied and the Notice of Deficiency issued on January 12, 1983 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 06 1984

Rodrick W. Clun  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Mark J. Fried  
COMMISSIONER