

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
James R. & Stella B. Cox :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1976. :
_____ :

AFFIDAVIT OF MAILING

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 9th day of November, 1984, he served the within notice of Decision by certified mail upon Robert D. Hall, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert D. Hall
Hall & Yahn
551 E. Genessee Street
Fayetteville, NY 13066

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 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
9th day of November, 1984.

David Parchuck

William A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
James R. & Stella B. Cox :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income Tax :
under Article 22 of the Tax Law for the Year 1976. :

AFFIDAVIT OF MAILING

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 9th day of November, 1984, he served the within notice of Decision by certified mail upon James R. & Stella B. Cox, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James R. & Stella B. Cox
106 Aladdin Dr.
Fayetteville, NY 13066

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
9th day of November, 1984.

David Parchuck

William D. Henderson
Authorized to administer oaths
pursuant to Tax Law section 174

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

November 9, 1984

James R. & Stella B. Cox
106 Aladdin Dr.
Fayetteville, NY 13066

Dear Mr. & Mrs. Cox:

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: Petitioner's Representative
Robert D. Hall
Hall & Yahn
551 E. Genessee Street
Fayetteville, NY 13066
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JAMES R. COX AND STELLA B. COX	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1976.	:	

Petitioners, James R. Cox and Stella B. Cox, 106 Aladdin Drive, Fayetteville, New York 13066, 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 1976 (File No. 31366).

Petitioners, on June 14, 1984, waived their right to a small claims hearing and requested that a decision be rendered based on the entire record contained in their file. After due consideration of the record, the State Tax Commission hereby renders the following decision.

ISSUES

I. Whether petitioners may exclude from New York income for 1976 the sum of \$4,433.36, said amount representing a moving expense reimbursement received by petitioner James R. Cox in 1976 for moving expenses incurred and paid in 1975.

II. Whether petitioners, if required to include the \$4,433.36 moving expense reimbursement in New York income for 1976, may deduct from New York income for said year moving expenses of \$4,233.00 which were paid by petitioners in 1975 and also deducted by petitioners on their 1975 Federal income tax return.

FINDINGS OF FACT

1. Petitioners herein, James R. Cox and Stella B. Cox,¹ timely filed a New York State Income Tax Resident Return for 1976 reporting total New York income of \$31,505.00. Petitioner was a resident of New York State for the entire 1976 tax year. The U.S. Individual Income Tax Return filed by petitioner for 1976 reported an adjusted gross income of \$35,940.00.

2. On April 11, 1980, the Audit Division issued a Notice of Deficiency to petitioner for 1976 imposing additional tax due of \$563.00, plus interest of \$142.11, for a total allegedly due of \$705.11. The aforementioned Notice of Deficiency was premised on an explanatory Statement of Audit Changes dated March 22, 1980, wherein the Audit Division, inter alia, increased petitioner's 1976 New York income to the same amount as reported on petitioner's 1976 Federal income tax return (\$35,940.00). The Statement of Audit Changes offered the following explanation:

"A full-year resident of New York is taxable on all income, regardless of source. As the moving expense reimbursement is taxable in the year received, it should be included in income on Line 1 of your return."

3. On or about November 25, 1975, petitioner changed his domicile and resident status from the Commonwealth of Pennsylvania to Fayetteville, New York. Petitioner incurred and paid during the year 1975 a total of \$7,711.00 in moving expenses. Of the \$7,711.00 in total moving expenses, only the amount of \$4,322.00 was deductible for Federal income tax purposes. Petitioner claimed on his 1975 Federal income tax return a deduction of \$4,322.00 for moving expenses.

¹ The excluded income at issue herein was received solely by James R. Cox and, therefore, the use of the term petitioner shall hereinafter refer only to James R. Cox.

4. In 1976 petitioner received from his employer, the United States Postal Service, \$4,433.36 for reimbursement of the moving expenses incurred and paid in 1975. Petitioner included the \$4,433.36 moving expense reimbursement in Federal adjusted gross income for the year 1976; however, said amount was excluded from New York income for 1976.

5. On March 28, 1981, petitioner submitted an amended return for 1976 increasing reported New York income by the \$4,433.36 moving expense reimbursement. Petitioner's amended return also increased New York deductions by \$4,233.00² for moving expenses which were claimed as a deduction on petitioner's 1975 Federal income tax return. Petitioner did not file an amended Federal income tax return for 1976. Additional tax due of \$26.00, as shown on the 1976 amended return, was paid by petitioner on the date said return was submitted to the Audit Division. The Notice of Deficiency dated April 11, 1980 was issued prior to the date petitioner filed his amended return and, therefore, the \$26.00 payment made with said amended return was not reflected in the Notice of Deficiency.

6. Petitioner's 1975 New York income tax return was prepared on a part year resident basis reporting only that income earned by petitioner from the period November 25, 1975 through December 31, 1975. Petitioner's total New York income for 1975 amounted to \$3,057.00. Petitioner did not deduct the moving expenses of \$4,322.00 on his 1975 New York State income tax return. Even without the benefit of the moving expense deduction of \$4,322.00, petitioner's 1975 New York State income tax return indicated that no tax was due.

² The moving expense deduction claimed on petitioner's 1975 Federal income tax return totaled \$4,322.00. There is no explanation in the record as to the reason petitioner claimed only \$4,233.00 in moving expenses on his 1976 amended return when the same moving expenses, as claimed on his 1975 Federal income tax return, totaled \$4,322.00.

CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law defines the New York adjusted gross income of a resident individual to mean his Federal adjusted gross income increased by the modifications provided for in section 612(b) of the Tax Law and decreased by the modifications provided for in section 612(c) of the Tax Law. Subsection (c) of section 612 of the Tax Law contains no provision which would permit petitioner to exclude from New York income the moving expense reimbursement of \$4,433.36. Accordingly, for the year 1976, petitioner's total New York income is identical to his reported Federal adjusted gross income (\$35,940.00).

B. That the moving expense deduction of \$4,322.00 was incurred and paid during the 1975 tax year and petitioner must therefore deduct said expenses on his 1975 tax return. Accordingly, petitioner can not increase his New York deductions for 1976 by \$4,233.00 for moving expenses which were properly deductible in the 1975 tax year.

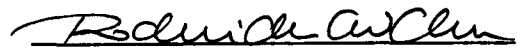
C. That the Notice of Deficiency dated April 11, 1980 is to be reduced by \$26.00 to take into consideration the payment made by petitioner on his amended return filed on March 28, 1981 (see Finding of Fact "5", supra).


D. That the petition of James R. Cox and Stella B. Cox is granted to the extent indicated in Conclusion of Law "C", supra; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER