

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Edward & Nesta Gallas :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :  
of New York State Personal Income Tax under Article :  
22 of the Tax Law and New York City Nonresident :  
Earnings Tax under Chapter 46, Title U of the :  
Administrative Code of the City of New York for :  
the Year 1978. :

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 21st day of September, 1984, he served the within notice of Decision by certified mail upon Neil E. Ellenoff, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Neil E. Ellenoff  
Ellenoff, Koizim & Goldin  
59 East 54 St.  
New York, NY 10022

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  
21st day of September, 1984.

David Parchuck

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

STATE OF NEW YORK

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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 21st day of September, 1984, he served the within notice of Decision by certified mail upon Edward & Nesta Gallas, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward & Nesta Gallas  
Box 450  
Pt. Pleasant, PA 18950

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  
21st day of September, 1984.

David Parchuck

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

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

September 21, 1984

Edward & Nesta Gallas  
Box 450  
Pt. Pleasant, PA 18950

Dear Mr. & Mrs. Gallas:

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 & 1312 of the Tax Law and Chapter 46, Title U of the Administrative Code of the City of New York, 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  
Neil E. Ellenoff  
Ellenoff, Koizim & Goldin  
59 East 54 St.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

EDWARD GALLAS AND NESTA GALLAS

DECISION

for Redetermination of a Deficiency or for  
Refund of New York State Personal Income Tax  
under Article 22 of the Tax Law and New York  
City Nonresident Earnings Tax under Chapter 46,  
Title U of the Administrative Code of the City  
of New York for the Year 1978.

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Petitioners, Edward Gallas and Nesta Gallas, Box 450, Point Pleasant, Pennsylvania 18950, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1978 (File No. 41420).

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 December 16, 1983 at 9:15 A.M. Petitioner Nesta Gallas appeared with Neil E. Ellenoff. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner Nesta Gallas is properly entitled to allocate a portion of the income derived from her New York employer, during the period in which she was on a "leave of absence", to sources without the State and City of New York.

FINDINGS OF FACT

1. Petitioners, Edward Gallas and Nesta Gallas, timely filed a New York State Personal Income Tax Nonresident Return for the year 1978 under filing status "married filing separately on one return". On such return, each petitioner allocated their respective salary incomes to sources within and without the State of New York. Additionally, each petitioner filed a separate New York City nonresident earnings tax return for 1978 whereon they similarly allocated their respective incomes to sources within and without the City of New York.

2. On March 31, 1980, the Audit Division issued a Statement of Audit Changes to petitioners wherein, based on information submitted, adjustments were made to each petitioner's claimed allocation. The adjustments to Mr. Gallas' claimed allocation were mainly with respect to the characterization of certain days as non-working days. The adjustments to Mrs. Gallas' claimed allocation were with respect to the shift in character on her allocation schedule of numerous days from "days worked outside New York State" to "days worked in NY State". Identical adjustments were made to Mrs. Gallas' claimed allocation for New York City purposes. Accordingly, a Notice of Deficiency was issued on July 9, 1980 asserting additional New York State and New York City personal income tax of \$775.87, plus interest of \$79.82, for a total of \$855.69. The total tax asserted of \$775.87 was broken down on the Statement of Audit Changes as follows:

	<u>New York State</u>	<u>New York City</u>	<u>Total</u>
Husband	\$1,227.71	\$ 62.46	\$1,290.17
Wife	(288.37)	(225.93)	(514.30)
Total Tax Asserted			<u>\$ 775.87</u>

3. Petitioner Edward Gallas conceded the adjustments made to his New York State and New York City returns. Accordingly, only those adjustments made to

Nesta Gallas' claimed allocation remain at issue herein.

4. The allocation claimed by Nesta Gallas (hereinafter petitioner) for New York State purposes was as follows:

Wages, salaries, tips, etc. (to be allocated)		\$17,790.00
Total days in year	365	
Total nonworking days	115	
Total days worked in year	250	
Days worked outside New York State	202	
Days worked in New York State	48	
New York State amount	$\frac{48}{250}$	x \$17,790.00 = <u>\$ 3,416.00</u>

An identical allocation was claimed by petitioner for New York City purposes.

5. Petitioner's New York State allocation, as adjusted by the Audit Division, was as follows:

Wages, salaries, tips, etc. (to be allocated)		\$17,490.38
Total days in year	365	
Total nonworking days	114	
Total days worked in year	251	
Days worked outside New York State	48	
Days worked in New York State	203	
New York State amount	$\frac{203}{251}$	x \$17,490.38 <sup>1</sup> = <u>\$14,145.61</u>

An identical adjusted allocation was computed by the Audit Division for New York City purposes.

6. Petitioner was employed as an associate dean for graduate studies at John Jay College of Criminal Justice, The City University of New York ("the college").

7. On September 1, 1977, the petitioner was granted a one year leave of absence under a fellowship award. Such leave extended to August 31, 1978. On

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<sup>1</sup> The reduced amount to be allocated, as determined by the Audit Division, resulted from the exclusion of \$300.00 in wages paid by West Virginia University.

termination of her leave, she returned to her duties at the college. The forty-eight (48) days allowed by the Audit Division as "days worked outside New York State" were with respect to the period September through December, 1978.

8. During her leave of absence, petitioner received half-pay from the Board of Higher Education.

9. Petitioner is a behavioral scientist. Her field of study is complex organizations that operate in a political environment in the public sector.

10. During petitioner's leave of absence, the research, study and travel she was engaged in was done primarily through professional associations in which she was active and held office. Such organizations were the American Society for Public Administration, the National Association of Schools of the Public Affairs Administration, the National Academy of Public Administration and the International Personnel Management Association.

11. Much of petitioner's research and study was done in her personal residence where she had access to her files and a telephone. The balance of her work done during her leave of absence was done either in Washington, D.C., where the secretariats of each of the aforestated associations were located, or in states other than New York. She contended that her physical presence was required in Washington, D.C. and the other states since she was a participant, speaker, organizer or chairperson of various sessions, seminars and colloquiums relating to the research she was engaged in.

12. Petitioner argued that it was necessary that her research and study be performed outside New York since she had no place within New York State to keep her files and the college did not provide her with an office during her leave of absence.

13. Petitioner testified that during her leave of absence she was not required, expected or requested to perform services for the college.

14. Regarding such leave of absence, petitioner's employment contract provided that "the applicant will continue to serve for at least one year after expiration of the term of his leave unless this provision is expressly waived by the Board". No evidence was submitted to show whether this provision was applicable or waived with respect to petitioner's leave.

15. No evidence, documentary or otherwise, was submitted to show whether, and if so to what extent, petitioner had allocated her salary from the college to sources without the State and City of New York during any of the years immediately preceding the years at issue herein.

#### CONCLUSIONS OF LAW

A. That the sabbatical leave granted to Nesta Gallas during the year 1978, was an employee benefit based upon past services performed within New York State in the service of her employer. Such days spent while on sabbatical leave are considered leave days with pay and are nonworking days for purposes of allocating income based on days worked within and without New York State within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16, and section U46-2.0(a)(2) of Chapter 46, Title U of the Administrative Code of the City of New York.

B. That the petition of Edward Gallas and Nesta Gallas is granted to the extent indicated in Conclusion of Law "A", supra; the Audit Division is hereby




directed to modify the Notice of Deficiency issued on July 9, 1980; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 21 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER