

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Estate of Paul V. Gartland : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of NYS Personal Income Tax under Article 22 of the :
Tax Law and NYC Nonresident Earnings Tax under :
Chapter 46, Title U of the Administrative Code of :
the City of New York for the Years 1977 through :
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 5th day of October, 1984, he served the within notice of Decision by certified mail upon Estate of Paul V. Gartland the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Paul V. Gartland
c/o James M. Gartland, Executor
Gartland & Mintz / 20 N. Main Street
Norwalk, CT 06854

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
5th day of October, 1984.

David Parchuck

James M. Gartland

Authorized to administer oaths
pursuant to Tax Law section 174

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

October 5, 1984

Estate of Paul V. Gartland
c/o James M. Gartland, Executor
Gartland & Mintz / 20 N. Main Street
Norwalk, CT 06854

Dear Mr. Gartland:

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, 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	:	
	:	
ESTATE OF PAUL V. GARTLAND	:	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 Years 1977 through 1979.	:	

Petitioner, Estate of Paul V. Gartland, c/o James M. Gartland,¹ Executor, Gartland and Mintz, Esqs., 20 North Main Street, Suite 210, South Norwalk, Connecticut 06854, 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 years 1977 through 1979 (File Nos. 33405 and 33559).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 7, 1984 at 10:45 A.M., with all additional evidence to be submitted by March 7, 1984 and all briefs by April 27, 1984. Petitioner appeared by its executor, James M. Gartland, Esq. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

¹ The petition was made by James M. Gartland, Executor, who also appeared at the hearing herein on behalf of the petitioner. However, the stationery of James M. Gartland, who is an attorney licensed to practice in Connecticut, is in the name of James L. Gartland. Except for the middle initials, the signatures of James M. Gartland and James L. Gartland are the same. The record is unclear concerning this discrepancy in middle initials.

ISSUE

Whether the wage income and commission income of Paul V. Gartland, a nonresident, were properly allocated to New York State/City.

FINDINGS OF FACT

1. On November 5, 1980, the Audit Division issued two statements of audit changes against petitioner, Estate of Paul V. Gartland, alleging additional New York personal income tax due of \$742.76, \$1,752.10 and \$3,750.11 for 1977, 1978 and 1979, respectively, and additional New York City nonresident earnings tax due of \$26.21, \$98.27 and \$207.98 for 1977, 1978 and 1979, respectively.

Interest charges were imposed on the amounts alleged due. The Audit Division provided the following explanation for the taxes alleged due for 1977 and 1978:

"Commissions earned are allocable to New York State on the same basis as wages earned."

For 1979, the following explanation was provided:

"Since the taxpayer performed services partly within and partly without New York State and New York City for the three years immediately preceeding 1979, total income for 1979 is based on his proportionate amount of wages and commissions earned since they are from New York sources."

2. On January 9, 1981, the Audit Division issued two notices of deficiency against petitioner alleging additional tax due of \$2,619.34 plus interest for 1977 and 1978 and \$3,958.09 plus interest for 1979.

3. Paul V. and Jane M. Gartland jointly filed New York State income tax nonresident returns for each of the years at issue. In 1977, they reported "wages, salaries, tips and other employee compensation" for Mr. Gartland from J & H Equity Corporation of \$52,706.94, of which \$41,754.85 was allocated to New York State/City. They allocated the wages to New York State/City by applying a fraction, the numerator of which was 183, the days Paul V. Gartland worked in New York State/City, and the denominator of which was 231, the total

days Paul V. Gartland worked in 1977, against Mr. Gartland's wages of \$52,706.94. In 1977, Mr. Gartland and his wife also reported "other income" of \$7,352.97. None of such "other income" was allocated to New York State/City. The Audit Division allocated such "other income" to New York State/City at the same rate that the wages were allocated.

In 1978, the Gartlands reported "wages, salaries, tips and other employee compensation" for Mr. Gartland from J & H Equity Corporation of \$64,162.61, of which \$49,580.18 was allocated to New York State/City. They allocated the wages to New York State/City by applying a fraction, the numerator of which was 170, the days Paul V. Gartland worked in New York State/City, and the denominator of which was 220, the total days Paul V. Gartland worked in 1978, against Mr. Gartland's wages of \$64,162.61. For 1978, "other income" of \$28,260.82 was also reported by the Gartlands, none of which was allocated to New York State/City. The Audit Division allocated such "other income" to New York State/City at the same rate that the wages were allocated.

In 1979, the Gartlands reported "wages, salaries, tips, etc." for Mr. Gartland from Johnson & Higgins of \$21,153.90 and "other income" of \$52,212.83. No portion of Mr. Gartland's wages or "other income" was allocated to New York State/City. Rather, the Gartlands claimed a refund of \$1,112.40 for New York State/City taxes withheld by Johnson & Higgins. The Audit Division allocated such wages and "other income" to New York State/City at a rate which was the average of the allocation rates for the three years immediately preceding 1979.

4. Paul V. Gartland was employed by the insurance brokerage house, Johnson & Higgins, located at 95 Wall Street, New York City, New York, as a senior vice-president for approximately twenty-six years. He was also president of J & H Equity Corporation, a wholly-owned subsidiary of Johnson & Higgins,

which according to James M. Gartland, Paul V. Gartland's son, "was involved with mutual funding and equity funding of some type". James M. Gartland testified that he had no personal knowledge concerning the sources of his father's commission income. He testified as follows:

"(T)he salary was paid by Johnson & Higgins, to the best of my knowledge.² The commissions were paid, I believe, by an agency owned by Mr. Shapiro in connection with outside work that was done on behalf of Mr. Shapiro's agency. I quite honestly am not -- I don't have full knowledge as to the business arrangement."

5. Paul V. Gartland died on March 26, 1979. He did not perform any work in New York State/City during 1979 because he was physically unable to commute from his home in Connecticut to his New York City office to work.

6. Petitioner's representative was granted up to one month after the hearing held herein to submit additional evidence which would show the source of Paul V. Gartland's commission income. Such evidence was never submitted.

CONCLUSIONS OF LAW

A. That pursuant to section 632 of the Tax Law and section U46-2.0 of the Administrative Code of the City of New York, a nonresident of New York State/City must pay taxes on net income derived from or connected with New York State/City sources.

B. That "a nonresident who performs services in New York or has an office in New York is allowed to avoid New York State tax liability for services performed outside the State only if they are performed of necessity in the service of the employer". Matter of Speno v. Gallman, 35 N.Y.2d 256, 259.

² In fact, according to the W-2 forms attached to the tax returns of Paul V. and Jane Gartland, Mr. Gartland's wages for 1977 and 1978 were from J & H Equity Corporation and his wages for 1979 were from Johnson & Higgins. J & H Equity Corporation and Johnson & Higgins share the same address, 95 Wall Street, New York City, New York 10005.

C. That Paul V. Gartland, who had an office in New York City during 1979, performed services outside New York because of personal illness and not of necessity in the service of his employer. Therefore, his wage income and commission income received during 1979 was properly subject to the New York State/City taxes at issue.

D. That petitioner has not shouldered its burden of proof under section 689(e) of the Tax Law and section U46-39.0(e) of the Administrative Code of the City of New York to show that the commission income of Paul V. Gartland during all of the years at issue is not allocable to New York State/City at the same rate that his wages are allocable. Furthermore, the Audit Division acted reasonably in using an average of the allocation rate for the three years immediately preceding 1979 to determine the amount of Paul V. Gartland's wages and commissions for 1979 to be allocated to New York.

E. That the petition of the Estate of Paul V. Gartland is denied.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 05 1984

Robbie Carlson
PRESIDENT

Thomas R. King
COMMISSIONER

COMMISSIONER

[Signature]

COMMISSIONER