

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Christer B. & Gunilla B. Pernblad :
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 1979. :

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

Christer B. & Gunilla B. Pernblad
Toreby Pl. 2117
Harestad, SWEDEN

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

Ernie A. Hagelrud
Authorized to administer oaths
pursuant to Tax Law section 174

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

September 21, 1984

Christer B. & Gunilla B. Pernblad
Toreby Pl. 2117
Harestad, SWEDEN

Dear Mr. & Mrs. Pernblad:

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	:	
	:	
CHRISTER B. AND GUNILLA B. PERNLAD	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1979.	:	

Petitioners, Christer B. and Gunilla B. Pernblad, Toreby Place 2117, 44033 Harestad, Sweden, 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. 34930).

On November 14, 1983, petitioners waived their right to a small claims hearing and requested that a decision be rendered by the State Tax Commission based upon the Department of Taxation and Finance file, and additional evidence to be submitted by March 16, 1984. Upon review of the record, the State Tax Commission renders the following decision.

ISSUES

I. Whether petitioners were resident individuals of New York State during any part of the year 1979.

II. Whether income tax withheld from petitioner Christer B. Pernblad's wages by his employer may be credited against petitioners' New York personal income tax.

FINDINGS OF FACT

1. Petitioners, Christer B. and Gunilla B. Pernblad, filed a 1979 New York State Income Tax Resident Return wherein petitioners reported that they were residents of New York State for the first seven months of 1979. Said

return also reported total New York income of \$18,863.06, a standard deduction of \$2,400.00 and state income tax withheld of \$1,246.00. The New York total income included wages and interest income of \$18,679.00 and \$184.06, respectively. A wage and tax statement attached to the return, and issued by Volvo of America Corporation to petitioner Christer Pernblad, reported wages of \$18,679.00 and New Jersey transportation tax withheld of \$1,246.00. No withholding of New York State income tax was indicated on said statement.

2. On October 8, 1980, the Audit Division issued to petitioners a Statement of Audit Changes proposing additional tax on the grounds that the standard deduction claimed on petitioners' return was limited to \$1,400.00 and that the claimed state income tax withheld was paid to New Jersey. The tax computation allowed a resident tax credit of \$632.60. Petitioners agreed to the adjustment limiting the standard deduction to \$1,400.00.

Accordingly, on March 11, 1981, a Notice of Deficiency was issued to petitioners for 1979 asserting additional tax due of \$269.50, plus interest.

3. On August 5, 1982, the Audit Division allowed petitioners a prorated household credit and made a small adjustment to the resident tax credit previously allowed on the Statement of Audit Changes. Said adjustments reduced the asserted deficiency to \$251.56, plus interest.

4. On May 1, 1977, petitioner Christer B. Pernblad, a Swedish citizen and domiciliary, was assigned by his Swedish employer, Aktiebolaget Volvo, to its North American organization, Volvo of America Corporation ("Volvo"). The assignment was for a two-year period. At the end of the two-year period, Mr. Pernblad was to return to Aktiebolaget Volvo in Sweden.

5. Petitioner Christer Pernblad and his family entered the United States in May of 1977 under a "L1" visa¹. Said visa had a one year duration, but was extended for one additional year. While living in the United States petitioners resided at 132 Parkside Drive, Suffern, New York. Petitioners continued to reside at that address until they returned to Sweden to live on August 1, 1979. During this period, Mr. Pernblad worked at Volvo's New Jersey facility as a technical support manager.

6. Petitioners maintained their residence in Sweden during the period they resided in New York State.

7. Sometime after October 8, 1980, petitioners filed a 1979 nonresident income tax return with the State of New Jersey. Mr. Pernblad's wages were included in New Jersey total income. A copy of the State of New Jersey's Explanation of Adjustments form showed that certain adjustments were made to the standard deduction and exemptions claimed on their New Jersey return. Said form also showed that petitioners were given credit for New Jersey tax withheld in the amount of \$1,246.00 and that they were due a refund from New Jersey in the amount of \$604.00.

8. The 1977 and 1978 wage and tax statements issued by Volvo to petitioner Christer Pernblad showed state income tax withheld and listed the states' name as "NJTT-NY". The 1979 statement listed the name of the state as "NJTT". Petitioner Christer Pernblad maintained that Volvo mistakenly changed the state to New Jersey without his knowledge and, therefore, he should not be held responsible for Volvo's mistake.

¹ An "L" type visa is issued to a nonimmigrant alien who seeks to enter the United States temporarily in order to continue rendering services to his employer (or its subsidiary or affiliate) at its United States location in a capacity that is managerial, executive, or involves specialized knowledge [8 USCS §1101(a)(15)(L)].

9. In order to clarify the record, petitioners were granted to February 17, 1984 to submit evidence concerning their New York State resident status during 1979. The Department of Taxation and Finance was allowed to March 16, 1984 to respond to petitioners' submission. The Department made no objection to the material submitted by petitioners. The facts found herein are taken in part from petitioners' submission.

CONCLUSIONS OF LAW

A. That petitioners were domiciliaries of Sweden who came to New York for a temporary and definite period of time for the accomplishment of a particular purpose. Petitioners did not maintain a permanent place of abode in this State and were therefore nonresidents of New York State during the entire year at issue [Tax Law §§605(b), 605(a)(2); 20 NYCRR 102.2(e); Matter of W. Lawrence and Elizabeth C. Banks, State Tax Comm., March 22, 1978]. Since petitioners' income consisted of wages earned by Mr. Pernblad for services he performed in New Jersey and interest income, petitioners had no income from New York sources during 1979 and, therefore, no New York State income tax is due for said period.

B. That the state income tax withheld of \$1,246.00 in 1979 by Volvo from Mr. Pernblad's wages was withheld for the benefit of and paid over to the State of New Jersey and not New York State. Accordingly, the Audit Division properly disallowed the tax withheld claimed by petitioners on their New York return.

C. That the Notice of Deficiency dated March 11, 1981 is hereby cancelled.

DATED: Albany, New York

SEP 21 1984

STATE TAX COMMISSION

Rodica W. Chu
PRESIDENT

Francis R. Koeng
COMMISSIONER

Mark J. [Signature]
COMMISSIONER