

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Michael Ray & Renee Richardson :

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 31st day of December, 1984, he served the within notice of Decision by certified mail upon Michael Ray & Renee Richardson, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Ray & Renee Richardson
c/o D. Cronson
336 West End Ave.
New York, NY 10023

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
31st day of December, 1984.

David Parchuck

Michael J. Williams

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Michael Ray & Renee Richardson :

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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 31st day of December, 1984, he served the within notice of Decision by certified mail upon Norman R. Berkowitz, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norman R. Berkowitz
919 Third Ave.
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
31st day of December, 1984.

David Parchuck

Nicola J. Williams

Authorized to administer oaths
pursuant to Tax Law section 174

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

December 31, 1984

Michael Ray & Renee Richardson
c/o D. Cronson
336 West End Ave.
New York, NY 10023

Dear Mr. & Mrs. Richardson:

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
Norman R. Berkowitz
919 Third Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MICHAEL RAY RICHARDSON AND RENEE RICHARDSON	:	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.	:	

Petitioners, Michael Ray Richardson and Renee Richardson, c/o Don Cronson, Esq., 336 West End Avenue, New York, New York 10023, 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. 36607).

A small claims 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 March 14, 1984 at 1:15 P.M. with all briefs to be submitted by May 18, 1984. Petitioner appeared by Norman R. Berkowitz, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anna Colello, Esq., of counsel).

ISSUE

Whether the wages, bonus income, endorsement income and a payment for pre-season expenses of Michael Ray Richardson, as a nonresident, were properly allocated to New York State/City.

FINDINGS OF FACT

1. Petitioner Michael Ray Richardson and his wife, Renee Richardson,¹ filed a joint 1978 New York State Income Tax Nonresident Return (Form IT-203/209).² Petitioner reported income from wages of \$108,333.28 of which he allocated \$36,549³ to New York State/City. This allocation was based upon the application of a fraction, the numerator of which was thirty-nine (the number of days petitioner worked in New York State/City) and the denominator of which was 122 (the total days worked in the year by petitioner), to income from wages of \$108,333.28. Petitioner's wages were from his employment by the professional basketball team, the New York Knickerbockers (hereinafter, "Knicks"). Petitioner also reported other income of \$8,200 which consisted of income of two thousand dollars from his personal endorsement of athletic footwear manufactured by Pacific Sports & Leisure, Inc. under the tradename "PONY", bonus income of six thousand dollars⁴ from the Knicks, and a payment received by petitioner for pre-season expenses of two hundred dollars.

¹ Renee Richardson is a party hereto solely because she is the wife of petitioner Michael Ray Richardson and filed a joint New York income tax return with her husband for the tax year at issue. Therefore, references hereinafter to "petitioner" are deemed to be to Michael Ray Richardson.

² The tax return was filed approximately four months after the due date. However, petitioner had obtained an extension of time to file his federal income tax return for 1978 until August 15, 1979 on the basis that petitioner "is a professional athlete and since the completion of his performance schedule has not had sufficient time to gather necessary information required for the completion of his income tax returns."

³ See footnote "4", infra.

⁴ Petitioner also allocated his bonus income by applying the allocation fraction noted supra. Although line 1 of Schedule A of petitioner's tax return shows that petitioner allocated \$36,549 of his wages of \$108,333.28 to New York State/City, the \$36,549 also includes an allocation of the bonus income of \$6,000.00.

2. On May 20, 1980, the Audit Division issued a Statement of Audit Changes against petitioner alleging New York State personal income tax due of \$2,281.54 and New York City nonresident earnings tax due of \$118.50. The alleged deficiency was the result of a larger allocation of petitioner's income from wages and bonus income to New York State/City based upon the application of a fraction, the numerator of which was twenty-two (the number of Knicks games that petitioner played in New York State/City) and the denominator of which was forty (the total number of Knicks games that petitioner played for the New York Knicks). The Audit Division also taxed in full petitioner's endorsement income of two thousand dollars because it claimed that petitioner "failed to disclose the location of your endorsement income...(Therefore) this income has been deemed to have been earned in New York State and taxable in full." The payment of two hundred dollars, which petitioner received for pre-season expenses, was allocated by the Audit Division to New York State/City at the same rate as his income from wages and bonus income.

3. Petitioner's allocation based on days resulted in a smaller allocation of income to New York State/City (than the Audit Division's allocation based on games played) because the Knicks training camp, which petitioner attended, was located outside New York State/City in Long Branch, New Jersey. Petitioner also spent several days outside New York State/City when travelling to or between games played outside New York State/City.

4. On September 10, 1981, the Audit Division issued a Notice of Deficiency against petitioner alleging additional income tax due of \$2,400.04 plus interest and penalties under Tax Law §§ 685(a)(1) and (2).

5. Petitioner commenced employment with the Knicks in September of 1978, the year at issue. He participated in a total of thirty-eight regular season

games, twenty of which were played in New York State/City and eighteen of which were played outside of New York State/City. In addition, he participated in six exhibition games, two of which were played in New York State/City and four of which were played outside of New York State/City.

6. Petitioner was paid two thousand dollars during 1978 for his personal endorsement of PONY's basketball shoes pursuant to a contract which required petitioner to wear exclusively PONY's basketball shoes whenever "playing competitive basketball, posing for basketball photographs, conducting or participating in basketball clinics, or otherwise engaging in basketball activities." Petitioner also agreed to make a minimum of two promotional appearances on behalf of PONY during each calendar year of the contract period, and to advise and consult with PONY with respect to the construction and design of PONY basketball shoes "at a location satisfactory to petitioner." The contract did not specify the geographic location for petitioner's promotional appearances. Petitioner did not introduce any evidence concerning the location where he advised and consulted with PONY concerning the design of their basketball shoes or where he made promotional appearances on behalf of PONY during 1978. It is noted that Pacific Sports & Leisure, Inc., the manufacturer of PONY shoes, has its principal office at 251 Park Avenue South, New York City.

7. Petitioner received a six thousand dollar bonus from the Knicks during 1978 pursuant to a specific provision of his employment agreement which provided that petitioner could by "a letter of direction" direct the Knicks to pay such bonus in whatever fashion he desired. Pursuant to a letter dated September 8, 1978, petitioner directed the Knicks to pay six thousand dollars on his behalf to Comiskey, Kaufman & Padon, a company involved in "professional insurance services, executive compensation programs and benefit planning."

8. The Audit Division in its brief conceded that the payment of two hundred dollars to petitioner for pre-season expenses is not taxable by New York State/City because "it was connected with games all played outside New York State."

9. Petitioner was a nonresident of New York who resided in New Jersey.

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 all income derived from or connected with New York State/City sources.

B. That pursuant to 20 NYCRR 131.16⁵ a nonresident employee who performs services for his employer both within and without the State shall include as income derived from New York sources that portion of his total compensation for services rendered as an employee which the total number of working days employed within the State bears to the total number of working days employed within and without the State.⁶

C. That 20 NYCRR 131.21 provides as follows:

"Sections 131.13 through 131.20 (of NYCRR) are designed to apportion and allocate to this State, in a fair and equitable manner, a nonresident's items of income, gain, loss and deduction attributable to a business, trade, profession or occupation carried on partly within and partly without this State. Where the methods provided under those sections do not so allocate and apportion those items, the commission may require a taxpayer to apportion and allocate those items under such method as it shall prescribe as long as the prescribed method results in a fair and equitable apportionment and allocation..."

⁵ The regulations cited in the Conclusions of Law are those which were in effect during the year at issue. They were later renumbered in the regulations that became effective in January, 1983.

⁶ The Administrative Code of the City of New York provides (without elaboration) that the nonresident earnings tax is imposed "on the wages earned...within the city." U46-2.0(a).

D. That the allocation of income earned by a professional basketball player for services rendered as such on the basis of days worked within and without New York State during the year does not result in a fair and equitable allocation of income. An allocation ratio based on games played within and without New York State/City results in a fair and equitable apportionment of income to New York State/City. Matter of Kareem Abdul Jabbar, State Tax Commission, April 9, 1982 and Matter of John and Robin Roche, State Tax Commission, December 3, 1982.

E. That, however, the Audit Division must include exhibition games in the allocation ratio. Matter of Roy H. and Linda White, State Tax Commission, February 14, 1979. Therefore, the Audit Division is directed to recompute the allocation ratio on the basis of a fraction, the numerator of which is twenty-two and the denominator of which is forty-four. Such allocation ratio should be used to apportion petitioner's income from wages and bonus income to New York State/City.

F. That pursuant to Finding of Fact "8", the payment of two hundred dollars to petitioner for pre-season expenses is not taxable by New York State/City.

G. That petitioner failed to sustain his burden of proving that the Audit Division incorrectly allocated one hundred percent of his endorsement income to New York State/City. As noted in Finding of Fact "6", supra, he did not introduce any evidence to show the geographic location of his promotional appearances or where he provided advice and consultation on the design of PONY basketball shoes. Furthermore, since the Knicks are a New York State/City professional basketball team, it is reasonable to assume that his promotional appearances were in New York State/City. In addition, the manufacturer of PONY

basketball shoes has its principal office in New York City. Therefore, it is also reasonable, in the absence of contrary proof, that petitioner provided advice and consultation on the design of PONY shoes in New York City.


H. That pursuant to footnote "2" of Finding of Fact "1", penalties are cancelled.

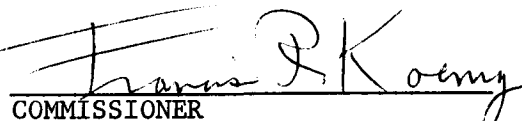
I. That the petition of Michael Ray Richardson and Renee Richardson is granted to the extent noted in Conclusions of Law "E", "F", and "H", but, in all other respects, is denied.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER