

STATE TAX COMMISSION

*Ernie P. 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 :  
Edward & Mary J. Wolfe :

AFFIDAVIT OF MAILING

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 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 5th day of October, 1984, he served the within notice of Decision by certified mail upon Edward & Mary J. Wolfe, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward & Mary J. Wolfe  
1 Oxford Rd.  
White Plains, NY 10605

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

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

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

October 5, 1984

Edward & Mary J. Wolfe  
1 Oxford Rd.  
White Plains, NY 10605

Dear Mr. & Mrs. Wolfe:

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  
Richard H. Appert  
11500 Skipwith Lane  
Potomac, MD 20854  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
EDWARD WOLFE and MARY J. WOLFE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1978.	:	

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Petitioners, Edward Wolfe and Mary J. Wolfe, 1 Oxford Road, White Plains, New York 10605, 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 1978 (File No. 35221).

Petitioners waived their right to a small claims hearing and requested that a decision be rendered on the entire record contained in their file. All briefs were to be submitted by October 24, 1983. After due consideration of the record, the State Tax Commission hereby renders the following decision.

ISSUE

Whether petitioners can include in the computation of personal service net income the sum of \$9,820.82, said amount representing petitioner Edward Wolfe's share of the New York City and District of Columbia unincorporated business taxes paid by the law firm in which he was a partner.

FINDINGS OF FACT

The petitioners and the Department of Taxation and Finance stipulated to the following facts:

1. Petitioners Edward Wolfe and Mary J. Wolfe reside at 1 Oxford Road, White Plains, New York.

2. Petitioner Edward Wolfe was a partner in a private law firm which derived income from New York State and New York City sources as well as sources outside of New York State and which filed Federal, New York State and New York City partnership returns on the basis of a taxable year ended September 30, 1978.

3. Petitioners timely filed a joint New York State Income Tax Resident Return on Form IT-201/208 for the calendar year 1978 in which they included in New York income on Schedule A the sum of \$233,583.21 representing Edward Wolfe's distributive share of the ordinary income of the law firm as reported for Federal income tax purposes for the law firm's fiscal year ended September 30, 1978.

4. As required by Section 612(b)(3) of the Tax Law, on line 2, column A of the return, petitioners added back to their income an amount which included the sum of \$9,208.47 representing petitioner Edward Wolfe's share of the New York City Unincorporated Business Tax paid by the law firm on its income from New York City sources and \$612.35 representing his share of the District of Columbia Unincorporated Business Tax paid by the law firm on its income from District of Columbia sources, both of which taxes had been deducted in computing the ordinary income of the law firm.

5. All of the income of the law firm except dividend income was income from the practice of law and was personal service income as defined in Section 1348 of the Internal Revenue Code of 1954 as that section was in effect in 1978. As required by Federal law, the dividend income was separately reported and not included in computing the "ordinary income" of the law firm.

6. In computing the maximum tax on personal service income on Form IT-250 attached to their 1978 New York State Resident Return, petitioners included in

personal service income on line 1 of that form the amount of \$233,583.21, representing petitioner Edward Wolfe's share of the ordinary income of the law firm as reported for Federal income tax purposes, and on line 2 added the \$9,820.82 of New York City and District of Columbia Unincorporated Business Taxes which had been deducted in computing the \$233,583.21 but which was disallowed as a deduction and required to be added back to the Federal income figure pursuant to Section 612(b)(3) of the Tax Law.

7. The Notice of Deficiency dated April 8, 1981 shows a determination of deficiencies in New York State Personal Income Taxes for 1977<sup>1</sup> and 1978 aggregating \$1,556.63 plus interest, of which \$265.10 is attributable to the elimination of the \$9,820.82 adjustment for the disallowance of the New York City Unincorporated Business Tax in the computation of Personal Service Income. The balance of the deficiencies has been agreed to and paid.

#### CONCLUSIONS OF LAW

A. That section 603-A(b)(1) of the Tax Law, in effect in 1978, defined New York personal service income as those:

"...items of income includible as personal service income for purposes of section one thousand three hundred forty-eight of the internal revenue code..."

B. That section 603-A(c) of the Tax Law provides for a definition of New York personal service net income as New York personal service income reduced by any deductions allowable under section 62 of the Internal Revenue Code which are properly allocable to or chargeable against such New York personal service income. The deductions for New York City and District of Columbia unincorporated

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<sup>1</sup> The tax year 1977 is not at issue in this proceeding, petitioners having withdrawn their protest for said year. Further, the \$265.10 of alleged tax due still in dispute is attributable solely to the 1978 tax year.

business taxes are allowable under section 62 of the Internal Revenue Code and are, therefore, properly chargeable against petitioner's New York personal service income.

C. That section 603-A(b)(1) of the Tax Law does not provide for the modification required pursuant to section 612(b)(3) to be included in New York personal service income. The intent of the Legislature with regard to this matter is shown in the Laws of 1980, Chapter 417, Section 34, wherein New York personal service income was redefined to include the amount of the modifications which must be added to federal adjusted gross income pursuant to section 612(b) paragraphs (7), (8) and (9) of the Tax Law as personal service income. This change was applicable to taxable years beginning on or after January 1, 1978. No other modifications which are required to be added to federal adjusted gross income have been included in the definition of personal service income. "It is well established that '[w]hen one or more exceptions are expressly made in a statute, it is a fair inference that the Legislature intended that no other exceptions should be attached to the act by implication' (McKinney's Cons Laws of NY, Book 1, Statutes, §213)." (Marx et al. v. State Tax Commission A.D.2d ). Accordingly, the modification required pursuant to section 612(b)(3) of the Tax Law can not be included in New York personal service income.


D. That the petition of Edward Wolfe and Mary J. Wolfe is denied.

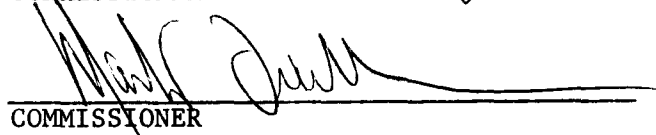
DATED: Albany, New York

STATE TAX COMMISSION

OCT 05 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER