

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Henry W. Albert : 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 :
1976.

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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Henry W. Albert, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry W. Albert
3 Wild Oaks Rd., P.O. Box 306
Goldens Bridge, NY 10526

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
6th day of February, 1985.

David Parchuck

Annie A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Henry W. Albert
3 Wild Oaks Rd., P.O. Box 306
Goldens Bridge, NY 10526

Dear Mr. Albert:

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

HENRY W. ALBERT

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1976.

Petitioner, Henry W. Albert, 3 Wild Oaks Road, P.O. Box 306, Goldens Bridge, New York 10526, 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 1976 (File No. 30708).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 25, 1984 at 2:45 P.M., with all briefs to be submitted by October 1, 1984. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Kevin A. Cahill, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed petitioner's moving expense deduction.

FINDINGS OF FACT

1. Petitioner herein, Henry W. Albert, timely filed a New York State Income Tax Resident Return for 1976 wherein he claimed, as an adjustment to income, the sum of \$2,701.63 for moving expenses.

2. On April 11, 1980, the Audit Division issued a Notice of Deficiency to petitioner for 1976, asserting that additional tax of \$415.38 was due, together with interest of \$105.52, for an alleged total due of \$520.90. The aforementioned

Notice of Deficiency was premised on an explanatory Statement of Audit Changes dated March 20, 1980, wherein the Audit Division disallowed petitioner's claimed moving expense deduction of \$2,701.63. Said moving expense deduction was disallowed on the ground that petitioner did not claim a moving expense deduction on his 1976 Federal income tax return and was therefore precluded from claiming a moving expense deduction on his 1976 New York State income tax return.

3. For the year at issue, and for some years prior thereto, petitioner, an engineer, was employed by the General Electric Company (hereinafter "G.E."). Sometime during 1975 G.E. transferred petitioner from its offices in Schenectady, New York to its offices in New York City. As a result of the aforementioned transfer, petitioner, during 1975, sold his personal residence located in Schenectady and purchased a new residence in Goldens Bridge, New York.

4. In connection with his move from Schenectady to Goldens Bridge, petitioner incurred various moving expenses which were lumped into two specific periods. The first period included expenses which petitioner personally incurred and paid in August, 1975, in connection with the sale of his residence in Schenectady, New York and certain other expenses. G.E. reimbursed petitioner for these expenses in 1975 and, pursuant to a letter dated January, 1976, advised petitioner as follows:

"Your W-2 for 1975, in the 'Wages Paid Subject to Withholding' block, includes provision for the following:

| | |
|----------------------------------|--------------------|
| Transfer Expense - Deductible | \$2,609.74 |
| Transfer Expense - Taxable | 1,839.49 |
| Tax allowance on Taxable portion | 827.77 |
| Total addition to paid salary | <u>\$5,277.00"</u> |

The second period included expenses for the storage and ultimate move of petitioner's household goods to Goldens Bridge, New York. The invoice from

the company which stored and subsequently delivered petitioner's household goods was dated on or about December 19, 1975. Petitioner did not personally pay the amount due shown on said invoice, instead electing to forward the invoice to G.E. for direct payment. G.E. paid this invoice sometime in 1976.

Pursuant to a letter dated December, 1976, G.E. advised petitioner that:

"You are receiving this month a check which covers the tax allowance on the taxable portion of your reimbursed transfer expenses.

Accordingly, your W-2 for 1976, covering the period on DSO payroll, in the 'Wages Paid Subject to Withholding' block, includes provision for the following:

| | |
|----------------------------------|--------------------|
| Transfer Expense - Deductible | \$2,701.63 |
| Transfer Expense - Taxable | 1,897.20 |
| Tax allowance on Taxable portion | 853.74 |
| Total addition to paid salary | <u>\$5,452.57"</u> |

5. Petitioner is a cash basis taxpayer. He personally prepared his Federal and New York State income tax returns for 1975 and 1976. Since the wage and tax statements issued by G.E. to petitioner for 1975 and 1976 included in wages the reimbursement for moving expenses (i.e. \$5,277.00 in 1975 and \$5,452.57 in 1976), petitioner's Federal and New York State income tax returns for both years are consistent in the reporting of the reimbursements in income. However, in claiming the moving expense deduction, petitioner reported different amounts for Federal and New York State purposes for both 1975 and 1976. Petitioner's 1975 Federal income tax return claimed a moving expense deduction of \$5,311.37, said amount computed as follows:

| | |
|--|-------------------|
| Deductible transfer expense per G.E. statement dated January, 1976 | \$2,609.74 |
| Deductible transfer expense per G.E. statement dated December, 1976 | <u>2,701.63</u> |
| Total | <u>\$5,311.37</u> |

Petitioner claimed no moving expense deduction on his 1976 Federal income tax return. The New York State income tax returns filed by petitioner for 1975 and 1976 claimed moving expense deductions of \$2,609.74 and \$2,701.63, respectively.

CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides that:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section."

The modifications to Federal adjusted gross income as provided for in section 612 of the Tax Law are not applicable in the instant matter.

B. That section 217(a) of the Internal Revenue Code allows a deduction for moving expenses paid or incurred during the taxable year. Treasury Regulation §1.217-2(a) provides that:

"For purposes of this section, amounts are considered as being paid or incurred by an individual whether goods or services are furnished to the taxpayer directly...or indirectly (paid to a third party on behalf of the taxpayer by an employer, a client, a customer, or similar person). A cash basis taxpayer will treat moving expenses as being paid for purposes of section 217 and this section in the year in which the taxpayer is considered to have received such payment under section 82 and §1.82-1."

C. That Treasury Regulation §1.82-1(a)(2) provides that:

"A cash basis taxpayer will include amounts in gross income under section 82 when they are received or treated as received by him... If the employer pays a mover for moving the employee's household goods and personal effects, the employee is considered as having received the payment at the time the employer pays the mover, rather than at the time the mover moves the employee's household goods and effects."

D. That since G.E. paid the company which stored and subsequently moved petitioner's household goods in 1976, petitioner must, pursuant to Treasury Regulation §§1.217-2(a) and 1.82-1(a)(2), claim that portion of the reimbursement which is allowable as a moving expense deduction (\$2,701.63) in 1976.


E. That petitioner's 1976 New York State income tax return was properly prepared claiming a moving expense deduction of \$2,701.63. Petitioner's 1976 Federal income tax return was incorrectly prepared and said return does not reflect his proper Federal adjusted gross income as defined in the laws of the United States.

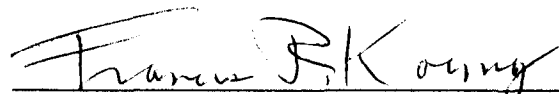
F. That the petition of Henry W. Albert is granted; and that the Notice of Deficiency dated April 11, 1980 is hereby cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985


PRESIDENT


COMMISSIONER


COMMISSIONER