

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Donald & Marion Clapsaddle :
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 :
1980. :
:

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 30th day of August, 1985, he served the within notice of Decision by certified mail upon Donald & Marion Clapsaddle, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald & Marion Clapsaddle
833 Londonderry Rd.
Schenectady, NY 12309

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
30th day of August, 1985.

David Parchuck

James A. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

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

August 30, 1985

Donald & Marion Clapsaddle
833 Londonderry Rd.
Schenectady, NY 12309

Dear Mr. & Mrs. Clapsaddle:

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	:	
DONALD CLAPSADDLE AND MARION CLAPSADDLE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the year 1980.	:	

Petitioners, Donald Clapsaddle and Marion Clapsaddle, 833 Londonderry Road, Schenectady, New York 12309 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 1980 (File No. 48832).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building #9, Albany, New York, on March 15, 1985 at 9:00 A.M. Petitioner Donald Clapsaddle appeared pro se and for his wife, Marion Clapsaddle. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether a distribution from a self-employed retirement plan received in 1980 by petitioner Donald Clapsaddle is subject to New York State personal income tax.

FINDINGS OF FACT

1. Petitioners, Donald Clapsaddle and Marion Clapsaddle, timely filed a joint New York State Income Tax Resident Return for the year 1980 whereon they reported "other income" of \$2,716.60. For Federal income tax purposes they reported "other income" for said year of \$8,655.96.

2. On November 9, 1982, the Audit Division issued a Statement of Audit Changes to petitioners wherein an adjustment was made increasing their reported total New York income by \$5,939.36. Said amount represents the difference between "other income" reported for Federal and New York State purposes. The Audit Division's basis for such adjustment was explained as follows:

"The starting point for computing the New York Tax liability is Federal adjusted gross income."

Accordingly, a Notice of Deficiency was issued against petitioners on September 22, 1983 asserting additional personal income tax of \$540.63, plus interest of \$156.43, for a total due of \$697.06.

3. The portion of "other income" omitted on petitioners' New York State return represents contributions by Donald Clapsaddle (hereinafter "petitioner") to a self-employed retirement plan ("Keogh Plan"). Said contributions were made from 1976 through mid 1979, during which period petitioners were residents of Massachusetts.

4. Although such contributions were tax deferred for Federal purposes, under Massachusetts State law they were not tax deferred and accordingly petitioner paid Massachusetts State tax on said contributions.

5. In mid 1979 petitioners changed their domicile and residence to New York State.

6. In 1980 petitioner terminated his Keogh Plan and received a total distribution from said plan of \$8,655.96, which was included in full in his 1980 Federal adjusted gross income.

7. Petitioner argues that since he has already paid state income tax to Massachusetts on \$5,939.36 of said distribution, only the balance of \$2,716.60 should be held taxable for New York State purposes. He argues that he should not be required to pay income taxes to two states on the same income.

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."

B. That section 612(c) of the Tax Law provides for certain modifications reducing Federal adjusted gross income; however, none of the modifications provided therein relate to the instant issue.

C. That the entire 1980 Keogh Plan distribution of \$8,655.96 is taxable for New York State purposes pursuant to section 612(a) of the Tax Law. Accordingly, the adjustment made by the Audit Division was proper.

D. That the petition of Donald Clapsaddle and Marion Clapsaddle is denied and the Notice of Deficiency issued September 22, 1983 is sustained together with such additional interest as may be lawfully owing.

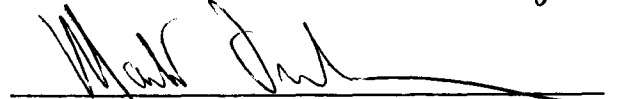
DATED: Albany, New York

STATE TAX COMMISSION

AUG 30 1985


PRESIDENT


COMMISSIONER


COMMISSIONER