

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Richard & Madeline Jeffery :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax and Unincorporated Business :  
Tax under Articles 22 and 23 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 Years 1978 and 1979. :

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 28th day of June, 1985, he served the within notice of decision by certified mail upon Richard & Madeline Jeffery, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard & Madeline Jeffery  
657 Pendleton Hill Rd.  
N. Stonington, CT 06359

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  
28th day of June, 1985.

David Parchuck

Samuel A. [Signature]  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Richard & Madeline Jeffery :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax and Unincorporated Business :  
Tax under Articles 22 and 23 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 Years 1978 and 1979. :  
:

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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 28th day of June, 1985, he served the within notice of decision by certified mail upon Richard I. Roth, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard I. Roth  
850 7th Ave.  
New York, NY 10019

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  
28th day of June, 1985.

David Parchuck

James P. O'Donnell  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

June 28, 1985

Richard & Madeline Jeffery  
657 Pendleton Hill Rd.  
N. Stonington, CT 06359

Dear Mr. & Mrs. Jeffery:

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 & 722 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 I. Roth  
850 7th Ave.  
New York, NY 10019  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
RICHARD AND MADELINE JEFFERY	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax and Unincorporated	:	
Business Tax under Articles 22 and 23 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 Years 1978 and 1979.	:	

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Petitioners, Richard and Madeline Jeffery, 657 Pendleton Hill Road, North Stonington, Connecticut 06359, filed a petition for redetermination of a deficiency or for refund of personal income tax and unincorporated business tax under Articles 22 and 23 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 years 1978 and 1979 (File No. 45289).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 13, 1984 at 2:45 P.M., with additional documentary evidence and briefs to be submitted by January 21, 1985. Petitioners appeared by Richard I. Roth, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUES

I. Whether the unincorporated commercial photography business of petitioner Richard Jeffery maintained a regular place of business outside New York.

II. Whether for personal income tax, nonresident earnings tax and unincorporated business tax purposes, petitioners realized additional, unreported income of \$4,956.48 in 1978.

FINDINGS OF FACT

1. On April 11, 1983, the Audit Division issued to petitioners, Richard and Madeline Jeffery, two notices of deficiency, asserting personal income tax and unincorporated business tax under Articles 22 and 23 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 years 1978 and 1979 scheduled as shown below.

	<u>1978</u>	<u>1979</u>
Personal income tax	\$5,008.53	\$2,234.12
Nonresident earnings tax	258.71	127.44
Unincorporated business tax	<u>1,817.09</u>	<u>915.16</u>
	\$7,084.33	\$3,276.72

The deficiencies were founded on two bases: (a) allegedly unreported income in the amount of \$28,602.00 realized by petitioners in 1978, which income was disclosed by a bank deposits analysis; and (b) the disallowance of an allocation without this state of a portion of the income of Mr. Jeffery's unincorporated business. The Audit Division also imposed on petitioners a penalty for failure to file estimated tax pursuant to Tax Law section 685(c).

Prior to the hearing, petitioners demonstrated to the Audit Division's satisfaction that \$24,312.00 of the \$28,602.00 did not represent unreported taxable income; the Audit Division concedes that the deficiencies for 1978 should be reduced accordingly.

	<u>1978</u>
Personal income tax	\$1,473.38
Nonresident earnings tax	94.19
Unincorporated business tax	<u>601.49</u>
	\$2,169.06

2. Mr. Jeffery is a well-known, regularly published commercial photographer specializing in still life photography. Over the course of his career, he has carried out assignments for many major periodicals and publishing houses, including The New York Times, Time-Life Books, and Good Housekeeping. Mr. Jeffery shoots his photographs at locations selected by his clients, at the studio of Ronald G. Harris in New York City, or at his home in Connecticut. Because Mr. Jeffery works on a free-lance basis, the percentages of assignments shot on location, in New York City and in Connecticut fluctuates from year to year.

3. Petitioners reside at Boulder Farm in North Stonington, Connecticut. Mr. and Mrs. Jeffery devote one of the farm outbuildings to their photography and weaving vocations, respectively. In the outbuilding, Mr. Jeffery maintains his records (e.g., job sheets and billing invoices), certain of his photographic equipment and his exposed film. One extension of petitioners' residential telephone is located in the outbuilding. Mr. Jeffery receives clients' proposals for assignments and consummates the transactions, negotiating fees, time schedules and locations, over this telephone. He is not listed in the Connecticut telephone directory as a commercial photographer because he does not hold himself out as photographing weddings and other personal occasions and also because he does not want to subject his equipment to a higher risk of theft. Mr. Jeffery does fulfill certain of his assignments, which clients desire photographed in daylight (as opposed to strobe), at the Boulder Farm.

4. For use of the photography studio in New York City, Mr. Jeffery remits to Mr. Harris a percentage of his fees and a portion of the expenses Mr. Harris incurs in maintaining the studio (for utilities, security systems, etc.). Mr. Jeffery is listed in the Manhattan telephone directory and in the building directory as a commercial photographer. Clients with whom Mr. Jeffery has done

business over the years telephone him at Boulder Farm; if a new client telephones him in New York City and he does not happen to be shooting in the studio, the caller is referred to Boulder Farm.

5. Mr. Jeffery delivers his exposed film to a color laboratory in New York City which forwards the film to a plant in Fairlawn, New Jersey for processing.

6. On the federal schedules C, Profit or (Loss) from Business or Profession, filed for the commercial photography business for 1978 and 1979, Mr. Jeffery claimed straight line depreciation on the Boulder Farm studio.

7. The amount of \$4,956.48, which allegedly represents additional, unreported income realized by petitioners in 1978, was deposited to their savings account at the Fleet National Bank on March 2, 1978. Petitioners requested the bank to provide them with a photostatic copy of the deposit ticket which would enumerate the items comprising the deposit. The bank was able to substantiate that the deposit was in fact made on March 2, 1978 but was unable to provide "a reproduction of legible quality due to the deterioration of the film used to photograph the items processed" on that date.

#### CONCLUSIONS OF LAW

A. That where an unincorporated business is conducted both within and without this state, there is allocated to this state "a fair and equitable portion of the excess of its unincorporated business gross income over its unincorporated business deductions" (Tax Law section 707[a]). If the business does not maintain a regular place of business outside New York, all of such excess is allocated to New York. The regulations define a regular place of business to include "any bona fide office, factory, warehouse or other place which is systematically and regularly used by the unincorporated business

entity in carrying on its business" (20 NYCRR 207.2[a]). The Boulder Farm studio, where Mr. Jeffery maintained all the records of his commercial photography business, frequently negotiated and consummated business transactions and regularly fulfilled his photographic assignments, clearly constituted a regular place of business of the unincorporated business entity, entitling it to allocate a portion of its income without New York.

B. That by reason of the deterioration of the bank's microfilm, petitioners were unable to offer the deposit ticket which would conclusively prove the items comprising the March 2, 1978 deposit to their account. By other records, petitioners were able to demonstrate to the Audit Division's satisfaction that \$24,312.00 of the original \$28,602.00 amount did not represent unreported taxable income. Such records tend to show, and the Tax Commission concludes, that petitioners' 1978 personal income tax return accurately reflected their true taxable income.

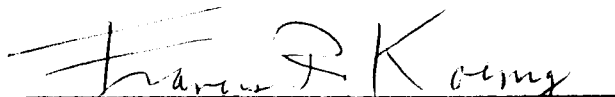
C. That the petition of Richard and Madeline Jeffery is granted, and the notices of deficiency issued on April 11, 1983 are cancelled.

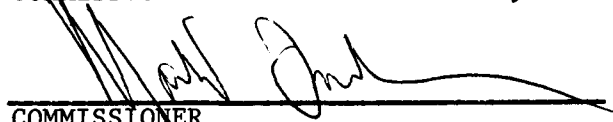
DATED: Albany, New York

STATE TAX COMMISSION

JUN 28 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER