

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of

Cleon & Angela Jones

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:

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 1975. :

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

Cleon & Angela Jones  
c/o Joel E. Jacobson & Company  
305 Abbingdon Drive  
East Windsor, NJ 08520

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

Bernice Or Hegelund

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  
Cleon & Angela Jones : 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 :  
1975.

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

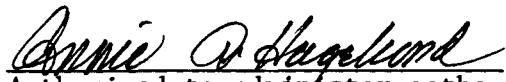
Stephen H. Feverstein  
450 7th Avenue  
New York, NY 10001

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  
6th day of February, 1985.



  
Annie D. Hagelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 6, 1985

Cleon & Angela Jones  
c/o Joel E. Jacobson & Company  
305 Abbingtton Drive  
East Windsor, NJ 08520

Dear Mr. & Mrs. Jones:

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  
Stephen H. Feverstein  
450 7th Avenue  
New York, NY 10001  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
CLEON JONES AND ANGELA JONES	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

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Petitioners, Cleon Jones and Angela Jones, c/o Joel E. Jacobson & Company, 305 Abbington Drive, East Windsor, New Jersey 08520, 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 1975 (File No. 37584).

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 24, 1984 at 1:15 P.M., with all briefs to be submitted by August 24, 1984. Petitioners appeared by Stephen H. Feuerstein, Esq. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether wages received by petitioner Cleon Jones, a nonresident professional baseball player, are allocable to New York State sources on the basis of days worked within and without the State or on the basis of the number of games played within and without the State.

FINDINGS OF FACT

1. Petitioners herein, Cleon Jones and Angela Jones<sup>1</sup>, timely filed a New York State Income Tax Nonresident Return for 1975 on March 15, 1976. On said return petitioner claimed a refund of \$1,846.00.

2. Cleon Jones was a well-known professional baseball player employed during part of the 1975 tax year by the Metropolitan Baseball Club, Inc. (more commonly known as the "New York Mets" and hereinafter referred to as the "Mets"). Wages received by petitioner from the Mets in 1975 amounted to \$62,568.00. On a schedule attached to his 1975 New York State income tax return, petitioner allocated the wages received from the Mets in the following manner:

<u>Period</u>	<u>Number of Games</u>	<u>Games in N.Y. State</u>	<u>Games out of N.Y. State</u>	<u>Salary</u>	<u>N.Y. State Earnings</u>
4/8/75 - 5/5/75	22	0	22	\$ 8,497.00	0
5/6/75 - 7/15/75	67	38	29	25,877.00	\$14,677.00
7/16/75 - 9/28/75	73	0	73	28,194.00	0
	<u>162</u>	<u>38</u>	<u>124</u>	<u>\$62,568.00</u>	<u>\$14,677.00</u>

The aforementioned schedule also indicated that from April 8, 1975 to May 5, 1975, petitioner was at extended spring training in St. Petersburg, Florida; that from May 6, 1975 to July 15, 1975, petitioner was an active player; and that from July 16, 1975 to September 28, 1975, petitioner was a free agent with full salary living in Mobile, Alabama.

3. The Audit Division did not process the refund as claimed on petitioner's 1975 return, electing instead to audit said return. As the result of its examination, the Audit Division, on April 13, 1976, issued to petitioner a

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1 Angela Jones is a party to this proceeding solely as the result of filing a joint income tax return with her spouse. Accordingly, the term petitioner shall hereinafter refer solely to Cleon Jones.

Statement of Refund Adjustment wherein petitioner's refund for 1975 was reduced from \$1,846.00, the amount claimed on his return, to \$22.27. The aforementioned Statement of Refund Adjustment offered the following explanation for the reduction of the claimed refund:

"Although you were disabled at the beginning of the regular season, and later released by the New York Mets, after playing a portion of the season, the income received is considered to have been paid for prior services rendered. Accordingly, the wages from the Mets are taxable to New York State on the usual 81/162 games basis."

The Audit Division determined that the wages received by petitioner from the Mets which were derived from New York State sources amounted to \$31,284.18 ( $81/162 \times \$62,568.35$ ).

4. Subsequent to the issuance of the Statement of Refund Adjustment dated April 13, 1976, the Audit Division determined that scheduled exhibition games should also be included in the allocation formula. Accordingly, the allocation of petitioner's wage income received from the Mets to New York sources was revised from \$31,284.18 ( $81/162 \times \$62,568.35$ ) to \$26,672.89 ( $81/190 \times \$62,568.35$ ). Said revision resulted in an additional refund due petitioner of \$584.39.

5. Petitioner, after receiving the second refund of \$584.39 plus interest, advised the Audit Division that he wished to allocate the wage income received from the Mets to New York State sources based on a percentage determined by placing days worked in New York State (34) over total working days (137). The allocation of wage income based on days worked resulted in an additional refund due petitioner of \$1,167.00. The Audit Division does not contest and, in fact, stipulated to the accuracy of the number of days worked in New York State and the total number of working days. The Audit Division does maintain, however, that an allocation based on days worked is inappropriate in the instant matter since it does not result in a fair and equitable allocation of income. Accordingly,

the Audit Division, on November 24, 1980, advised petitioner that his claim for an additional refund of \$1,167.00 was denied in full. A petition for refund was thereafter timely filed.

6. At the close of the 1974 baseball season, petitioner's contract with the Mets expired. On or about November 11, 1974, petitioner entered into a one year contract with the Mets for the year 1975 which encompassed the training season, the exhibition games, the playing season, the League Championship Series and the World Series. Article 7(e) of the contract dated November 11, 1974 provided that:

"...if this contract is terminated under said subparagraph (b)(2) for failure to exhibit sufficient skill or competitive ability, on or after May 15, the additional amount (termination pay) which the Player shall be entitled to receive shall be the unpaid balance of the full salary stipulated in paragraph 2 for that season."

7. On July 15, 1975, the Mets terminated petitioner's contract pursuant to Article 7(e) of said contract, supra. In accordance with the terms of said contract, the Mets were obligated to and, in fact, continued to pay petitioner the unpaid balance of his full salary. Petitioner performed no services for the Mets after July 15, 1975.

8. The 28 scheduled exhibition games were all played prior to April 8, 1975 and were all played outside of New York State. The Mets' regular playing season started on April 8, 1975; however, petitioner did not begin the season with the Mets, having instead been assigned to extended spring training in St. Petersburg, Florida. The record is devoid of evidence as to the nature of any services performed by petitioner during this extended spring training period or as to whether petitioner participated in any instructional or minor league games during this extended spring training. Petitioner joined the Mets as an active player on May 6, 1975 and he remained an active player until

July 15, 1975, the date the Mets terminated his contract. From April 8, 1975 to May 5, 1975, the period which encompassed petitioner's extended spring training, the Mets played a total of 22 games; however, the record does not disclose how many of these games were played in New York State. From May 6, 1975 to July 15, 1975, the period covering petitioner's status as an active player, the Mets played a total of 67 games, of which 38 were played in New York State.

9. Petitioner argues that days worked within and without the State of New York represent the proper method of allocating wage income received from the Mets to New York State sources.

#### CONCLUSIONS OF LAW

A. That pursuant to section 632 of the Tax Law, a nonresident of New York State must pay taxes on all income derived from or connected with New York State sources.

B. That pursuant to regulation section 131.16<sup>2</sup>, 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.

C. That regulation section 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

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2 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.



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...".

D. That the allocation of income earned by a professional baseball 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 results in a fair and equitable apportionment of income to New York State. 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 given the facts of this particular case, the allocation of wage income based on the games played method is to be modified by eliminating from both the numerator and the denominator the 22 games played during the period of petitioner's extended spring training (April 8, 1975 through May 5, 1975). During the period of his extended spring training in St. Petersburg, Florida, petitioner could not and did not participate in any of the Mets' scheduled games. Since the record is devoid of evidence as to what petitioner actually did during this extended spring training period, specifically whether he played in any games with a minor league affiliate of the Mets and the location of such games, it is fair and equitable to merely eliminate the 22 games from the allocation formula. Accordingly, wages received by petitioner from the Mets during the period January 1, 1975 through July 15, 1975 are to be allocated based on a fraction, the numerator of which is 38 and the denominator of which is 95 (28 + 67).

F. That salary payments (termination pay) received by petitioner from the Mets after July 15, 1975 are properly considered as income which was partly

derived from and connected with New York sources [Tax Law sections 632(b)(2) and 632(c)]. Petitioner received payments after July 15, 1975 as the direct result of his employment contract with the Mets and since petitioner performed services both within and without New York State prior to his termination, it is proper to allocate said payments to New York sources on the same basis that wages received prior to termination were allocated to New York sources.

Accordingly, that portion of the 1975 wages received by petitioner from the Mets which was derived from and connected with New York sources amounted to \$25,027.34 (38/95 x \$62,568.35). Matter of Robert P. and Mary D. Hyde, State Tax Commission, December 12, 1980.

G. That the petition of Cleon Jones and Angela Jones is granted to the extent indicated in Conclusion of Law "F", supra; that the Audit Division is directed to recompute and process any refund due petitioner consistent with the conclusions reached herein; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER