

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sotirios Kalfas :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of New York State and New York City Personal Income :
Taxes under Article 22 of the Tax Law and Chapter :
46, Title T 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 29th day of May, 1985, he served the within notice of Decision by certified mail upon Sotirios Kalfas, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sotirios Kalfas
144-44 26th Ave.
Flushing, NY 11354

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
29th day of May, 1985.

David Parchuck

James W. O'Connell
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sotirios Kalfas :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of New York State and New York City Personal Income :
Taxes under Article 22 of the Tax Law and Chapter :
46, Title T 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 29th day of May, 1985, he served the within notice of Decision by certified mail upon Thomas J. Carley, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas J. Carley
159 Princeton Rd.
Rockville Centre, NY 11570

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
29th day of May, 1985.

David Parchuck

Annie C. Hogeland

Authorized to administer oaths
pursuant to Tax Law section 174

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

May 29, 1985

Sotirios Kalfas
144-44 26th Ave.
Flushing, NY 11354

Dear Mr. Kalfas:

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 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, 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
Thomas J. Carley
159 Princeton Rd.
Rockville Centre, NY 11570
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SOTIRIOS KALFAS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Taxes under Article 22 of the	:	
Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York	:	
for the Years 1978 and 1979.	:	

Petitioner, Sotirios Kalfas, 144-44 26th Avenue, Flushing, New York 11354, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1978 and 1979 (File No. 41707).

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 June 29, 1984 at 12:00 noon, with all briefs to be submitted by January 4, 1985. Petitioner appeared by Thomas J. Carley, Esq. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether for the taxable years 1978 and 1979, petitioner has any liability for New York State and New York City personal income taxes based upon compensation received for services rendered.

II. Whether there exists any constitutional or statutory authority for the imposition upon petitioner of the New York State and New York City personal income taxes at issue in this proceeding.

FINDINGS OF FACT

1. Petitioner, Sotirios Kalfas, filed a New York State Income Tax Resident Return for the taxable year 1978. A Wage and Tax Statement issued to petitioner by SCM Corporation was appended to the return and reflected wages, tips or other compensation in the amount of \$29,100.00 and New York State personal income tax withheld therefrom of \$2,201.76. Of a total New York income of \$12,572.00, \$7,545.00 consisted of "business income" computed by petitioner as shown below.

Receipts per W-2		\$29,100
Subtractions		
taxes	3,842	
rent	2,137	
insurance	217	
legal and other fees	2,000	
subsistence and maintenance	9,363	
interest	23	
auto et al.	2,379	
telephone	310	
utilities	560	
dues and subscriptions	51	
gifts	673	
		(21,555)
		<u>\$ 7,545</u>

Petitioner filed a New York State Income Tax Resident Return for the taxable year 1979, attaching two wage and tax statements, relevant information from which is shown below.

<u>EMPLOYER</u>	<u>WAGES</u>	<u>NYS INCOME TAX WITHHELD</u>	<u>NYC INCOME TAX WITHHELD</u>
SCM Corporation	\$11,845.22	\$787.95	--
Wang Laboratories, Inc.	<u>2,837.53</u>	<u>188.34</u>	<u>\$11.94</u>
	\$14,682.75	\$976.29	\$11.94

Petitioner's total New York income consisted of "business income" computed by petitioner as follows:

Receipts		
per W-2s	\$14,683	
other	5,139	
		\$19,822
Subtractions		
taxes	3,546	
rent	2,298	
insurance	78	
legal and other fees	1,100	
subsistence and maintenance	5,216	
interest	13	
auto et al.	2,754	
telephone	253	
utilities	443	
supplies	54	
gifts	150	
		(15,905)
		<u>\$ 3,917</u>

2. On October 7, 1982, the Audit Division issued to petitioner a Notice of Deficiency, asserting New York State and New York City personal income taxes under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1978 and 1979 in the combined amount of \$3,058.30, plus interest. The Notice was issued by the authority of Tax Law section 681 and Administrative Code section T46-181.0.

A Statement of Audit Changes, previously issued to petitioner on March 24, 1982 and explaining the basis for and computation of the above asserted deficiency, provided in relevant part as follows:

"As you failed to submit the information previously requested by this office, your tax liability has been recomputed as shown. Household credit is not allowed on your 1978 return, as your Household gross income is not less than \$25,000.00. Also, the maximum tax benefit has been allowed on your 1978 return."

<u>1978</u>	
Wages	\$29,100.00
Interest income	583.00
Dividend income	1,061.00
Capital gain	3,383.00
Total income	<u>\$34,127.00</u>
Capital gain modification	343.00
Total NY income	<u>\$34,470.00</u>
Standard deduction	(2,400.00)
Exemption	(1,300.00)
NY taxable income	<u>\$30,770.00</u>

Personal service net income	\$29,100.00
Total NY income	34,470.00
Percentage (\$29,100/\$34,470)	84.42%
NY taxable income	30,770.00
Personal service taxable income (\$30,770 x 84.42%)	\$25,976.03

	<u>NYS</u>	<u>NYC</u>
Tax on NY taxable income	\$2,875.50	\$923.11
Maximum tax benefit on personal service taxable income	183.10	
Maximum tax	\$2,692.40	\$923.11
Tax previously stated	(383.43)	(172.73)
Additional personal income tax due	\$2,308.97	\$750.38

<u>1979</u>	
Wages	\$14,682.75
Other income per return	5,139.00
Total NY income	\$19,821.75
Standard deduction	(2,400.00)
Exemption	(1,400.00)
NY taxable income	\$16,021.75

	<u>NYS</u>	<u>NYC</u>
Tax on NY taxable income	\$ 962.10	\$352.65
Household credit	(35.00)	
Net tax	\$ 927.10	\$352.65
Tax withheld	(976.29)	(304.51)
(Overpayment)/underpayment	(\$ 49.19)	\$ 48.14
Net overpayment	(\$ 1.05)	
1978 additional personal income tax	2,308.97	750.38
TOTAL TAX DUE	\$2,307.92	\$750.38

4. Through his authorized representative, petitioner elected to offer no testimonial or documentary evidence whatsoever at the hearing, relying upon various statutory and constitutional arguments raised in his perfected petition and his brief and reply brief.

CONCLUSIONS OF LAW

A. That it is by now beyond dispute that compensation received in exchange for services constitutes gross income and that the United States, New York State and New York City governments possess the constitutional and statutory power to tax wages (Matter of Emil C. Lampe, State Tax Comm., December 31, 1984

and the authorities therein cited).

B. That petitioner has failed to carry his burden of proof, imposed upon him by Tax Law section 689(e) and Administrative Code section T46-189.0(e), to demonstrate any error in the calculation of the deficiency asserted against him.

C. That the petition of Sotirios Kalfas is hereby denied, and the Notice of Deficiency issued on October 7, 1982 is sustained in all respects.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 29 1985

Rodrigue auClu
PRESIDENT

Francis P. Koenig
COMMISSIONER

Mark J. [Signature]
COMMISSIONER