

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Joseph & Joyce Mansfield :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for :
the Year 1977.

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 15th day of February, 1985, he served the within notice of Decision by certified mail upon Joseph & Joyce Mansfield, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph & Joyce Mansfield
45 West 60 St., Apt. 25-C
New York, NY 10023

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
15th day of February, 1985.

David Parchuck

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph & Joyce Mansfield :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for :
the Year 1977. :

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 15th day of February, 1985, he served the within notice of Decision by certified mail upon William Mander, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Mander
1775 Broadway
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
15th 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 15, 1985

Joseph & Joyce Mansfield
45 West 60 St., Apt. 25-C
New York, NY 10023

Dear Mr. & Mrs. Mansfield:

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, 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
William Mander
1775 Broadway
New York, NY 10019
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOSEPH and JOYCE MANSFIELD : DECISION
for Redetermination of a Deficiency or for :
Refund of New York State Personal Income Tax :
and New York City Nonresident Earnings Tax :
under Article 22 of the Tax Law and Chapter 46, :
Title U of the Administrative Code of the City :
of New York for the Year 1977.

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 October 4, 1984 at 10:45 A.M. Petitioners appeared by Padell, Nadell, Fine, Weinberger & Co. (William L. Mander, Esq.). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

Whether moving expenses incurred by petitioners in relocating from Georgia to Connecticut and the reimbursement for such expenses paid by Mr. Mansfield's employer constitute an adjustment to income and an item of income, respectively, allocable to New York State for personal income tax purposes and to New York City for nonresident earnings tax purposes.

FINDINGS OF FACT

1. On or about April 16, 1979, Joseph and Joyce Mansfield filed an amended, joint New York State Income Tax Nonresident Return (with New York City nonresident earnings tax) for the taxable year 1977, stating their address as 176 Trinity Pass Road, Stamford, Connecticut, and requesting a refund in the sum of \$4,759.00. (Mrs. Mansfield is a party to this proceeding solely as the result of filing such joint return with her husband; therefore, the term "petitioner" shall hereafter refer only to Mr. Mansfield.) Petitioner did not include in income reported to the State and City of New York \$31,687.40 in moving expenses reimbursed by his employer, CBS, Inc. ("CBS"); nor did he make an adjustment to income for moving expenses in the amount of \$4,636.00.

2. On July 27, 1981, the Audit Division disallowed petitioner's requested refund on two grounds: (a) that petitioner was a statutory resident of the State/City during a portion of 1977; and (b) that the reimbursement for moving expenses was includible in income for New York State personal income tax and New York City nonresident earnings tax purposes (allocable to the State/City in accordance with the appropriate allocation percentage) and the moving expenses incurred constituted an adjustment to income for State personal income tax purposes (allocable to the State in accordance with the appropriate allocation percentage). Subsequent to a pre-hearing conference between representatives of petitioner and of the Audit Division, it was determined that petitioner was not a resident of the State/City during any part of 1977 and consequently, \$2,632.00 of petitioner's requested refund was granted. Remaining in dispute is \$2,127.00 of the requested refund, attributable to the adjustment to income for moving expenses and the inclusion in income of the moving expenses reimbursement. The Audit Division allocated petitioner's moving expenses to the State and the

reimbursement for such expenses to the State/City in accordance with a fraction, the numerator of which was days petitioner worked in the State/City and the denominator of which was total days petitioner worked during 1977 (153/241); this was the allocation percentage as computed by petitioner on his amended return.

3. Prior to and during 1977, petitioner was employed as an executive in the records division of CBS. His primary responsibility was to attend various conventions and meetings throughout the United States with the goal of locating potential "new talent". His working days were thus spent traveling from city to city, at his office in CBS' business premises in Georgia, or at CBS' principal offices situated at West 52nd Street, New York, New York.

4. At some point during 1977, CBS requested petitioner to be present more frequently at its New York City offices. This request, coupled with petitioner's desire to reside in the New York City metropolitan area, resulted in petitioner's relocation from Georgia to Stamford, Connecticut in September, 1977. Except for spending more time at CBS' New York City offices, petitioner's responsibilities and business patterns continued as before.

CONCLUSIONS OF LAW

A. That, in general, the New York adjusted gross income of a nonresident individual is comprised of the net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income and derived from or connected with New York sources. (Tax Law section 632[a][1]). Items of income, gain, loss and deduction derived from or connected with New York sources include (but are not limited to) items attributable to a business, trade, profession or occupation carried on in this state (section 632[b][1][B]). Where a nonresident employee performs services for his employer both within and

without this state, the items of income, gain, loss and deduction (other than deductions entering into the New York itemized deduction) attributable to his employment are allocable to New York in the proportion which the number of his working days within New York bears to the total number of his working days both within and without New York (20 NYCRR 131.18[a]).

B. That section 82 of the Internal Revenue Code requires the inclusion in gross income, as compensation for services, of "any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment...". The reimbursement by CBS for petitioner's expenses incurred in relocating from Georgia to Connecticut, which move was primarily (if not solely) precipitated by CBS' request for petitioner's more frequent presence at its New York City offices, is includible in petitioner's 1977 federal gross income and thus also in his New York adjusted gross income, subject to an appropriate allocation.

C. That pursuant to Code section 217, a deduction from gross income is permitted for "moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee...". Petitioner's moving expenses constitute a negative adjustment to his federal gross income and thus also to his New York adjusted gross income, again subject to an appropriate allocation.

D. That the New York City nonresident earnings tax is imposed upon wages earned within the City (Administrative Code section U46-2.0[a][1]); for purposes of the tax, the term "wages" has the definition given by Internal Revenue Code section 3401(a) (Administrative Code section U46-1.0[e]). Paragraph (15) of Internal Revenue Code section 3401(a) provides that an employer's reimbursement

for an employee's moving expenses is not considered wages, if at the time the remuneration is paid it is reasonable to believe a corresponding deduction is permissible under Internal Revenue Code section 217. Conversely, in the event the moving expenses reimbursement exceeds actual moving expenses, such excess constitutes wages within the definition of Internal Revenue Code section 3401(a). Therefore, \$27,051.00 of the reimbursement paid to petitioner by CBS were (allocable) wages subject to the nonresident earnings tax.

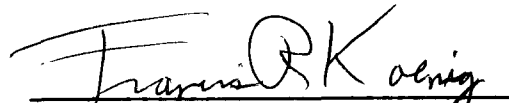
E. That the petition of Joseph and Joyce Mansfield is denied except as granted at the pre-hearing conference, and the Audit Division is directed to process their refund in the principal amount of \$2,632.00 (see Finding of Fact "2").


DATED: Albany, New York

FEB 15 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER