

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Edward & Mary Hardy :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for :
Refund of New York State Personal Income Tax :
under Article 22 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 1979 & 1980.

State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 5th day of December, 1986, he/she served the within notice of Decision by certified mail upon Edward & Mary Hardy the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

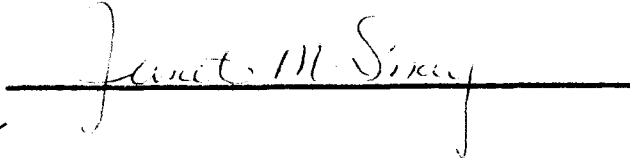
Edward & Mary Hardy
P.O. Box 839
Newark, NJ 07101

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
5th day of December, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



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

December 5, 1986

Edward & Mary Hardy
P.O. Box 839
Newark, NJ 07101

Dear Mr. & Mrs. Hardy:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

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In the Matter of the Petition	:	
of	:	
EDWARD HARDY & MARY HARDY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 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 1979 and 1980.	:	

Petitioners, Edward Hardy and Mary Hardy, P.O. Box 839, Newark, New Jersey 07101, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 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 1979 and 1980 (File No. 51022).

A 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 May 14, 1986 at 10:45 A.M., with all briefs to be submitted by August 12, 1986. Petitioner Edward Hardy appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioner Edward Hardy is properly entitled to allocate a portion of his salary income to sources without the State and City of New York.

II. Whether petitioner Edward Hardy is properly entitled to claim a business loss and a rental loss for each of the years 1979 and 1980.

FINDINGS OF FACT

1. Edward Hardy and Mary Hardy filed joint New York State income tax nonresident returns for the years 1979 and 1980. On each return Edward Hardy (hereinafter "petitioner") allocated his salary income to sources within and without the State of New York as follows:

1979

(Days worked in New York State)	80	x	\$33,524.00 (salary)	=	\$11,762.00
(Total days worked in year)	<u>228</u>				(Amount allocated to New York State)

1980

(Days worked in New York State)	80	x	\$37,188.00 (salary)	=	\$13,164.00
(Total days worked in year)	<u>226</u>				(Amount allocated to New York State)

2. On each of the aforesated returns petitioner allocated 35% of his reported business loss and rental loss to New York State.

3. For each of said years petitioner also filed a New York City Nonresident Earnings Tax Return whereon he allocated his salary and claimed losses to New York City on the same basis as that used for New York State. On such returns petitioner reported that his business losses were derived from "Hardo Manufacturers," a "metal works" business located at 247 N.J. Railroad Avenue, Newark, New Jersey.

4. On November 15, 1982, the Audit Division issued a Statement of Audit Changes to petitioner and his wife wherein petitioner's claimed allocations were disallowed. Additionally, penalties were asserted for the late filing of their 1979 return (which was dated April 15, 1981 and received by the Audit Division on April 20, 1981) and the late payment of the taxes due thereon. Accordingly, a Notice of Deficiency was issued against petitioner and his wife for the years 1979 and 1980 on June 17, 1983 asserting additional New York

State personal income tax of \$4,008.36, additional New York City nonresident earnings tax of \$318.21, penalty of \$720.01 and interest of \$1,355.50, for a total due of \$6,402.08.

5. As the result of a pre-hearing conference the tax deficiency was reduced from \$4,326.57 to \$3,706.19. Such reduction was based on the allowance of 32 days worked without New York during 1979 and 21 days worked without New York during 1980. Said allowances were based on documentation submitted by petitioner.

6. During the years at issue petitioner was employed by the U.S. Department of The Interior, Office of Youth Programs. He held the position of Regional Director. His region was comprised of New York, New Jersey and Delaware. His duties consisted, inter alia, of visiting the camps within his jurisdiction.

7. Petitioner submitted several travel vouchers to evidence a portion of his claimed days spent without New York. However, he was allowed all such substantiated days at the pre-hearing conference.

8. The balance of days claimed as having been worked without New York were unsubstantiated. Petitioner submitted a listing of such days but did not provide the original records from which the listing was purportedly prepared.

9. During a portion of the years at issue petitioner operated from an office located at the Veterans Administration Building in Manhattan. Subsequently, his office was relocated to the World Trade Center in Manhattan.

10. Petitioner failed to show that he is properly entitled to either a rental loss or a business loss for New York State and City purposes for either year at issue herein.

CONCLUSIONS OF LAW

A. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law and section U46-39.0(e) of the Administrative Code of the City of New York, to show that he is entitled to a greater allowance for days worked without New York than that allowed as the result of the pre-hearing conference.

B. That petitioner has failed to sustain his burden of proof to show that he is properly entitled to a business loss or a rental loss during either year at issue.


C. That the petition of Edward Hardy and Mary Hardy is denied.


D. That the Notice of Deficiency issued June 17, 1983 is to be modified so as to reflect the adjustment made at the pre-hearing conference (see Finding of Fact "5", supra) and except as so stated, said notice is sustained together with such penalty and interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

DEC 05 1986


PRESIDENT


COMMISSIONER


COMMISSIONER