

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Robert J. Bivolcic :

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 Year 1981. :

State of New York :

ss.:

County of Albany :

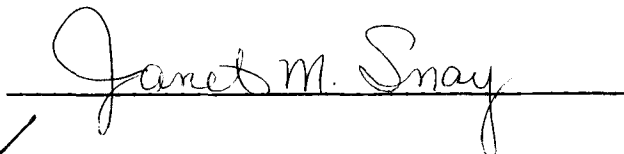
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 6th day of April, 1987, he/she served the within notice of decision by certified mail upon Robert J. Bivolcic the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Robert J. Bivolcic
3 Hawthorne Drive
Englishtown, NJ 07726

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 April, 1987.




Authorized to administer oaths
pursuant to Tax Law section 174

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

April 6, 1987

Robert J. Bivolcic
3 Hawthorne Drive
Englishtown, NJ 07726

Dear Mr. Bivolcic:

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 and 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 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	:	DECISION
ROBERT J. BIVOLCIC	:	
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 Year 1981.	:	

Petitioner, Robert J. Bivolcic, 3 Hawthorne Drive, Englishtown, New Jersey 07726, 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 year 1981 (File No. 62421).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 4, 1986 at 10:45 A.M., with all briefs to be submitted by January 15, 1987. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Gary Palmer, Esq., of counsel).

ISSUE

Whether wages received by petitioner as compensation for his labor are subject to New York State and New York City personal income tax.

FINDINGS OF FACT

1. Petitioner, Robert J. Bivolcic, filed a New York State Nonresident Income Tax Return together with New York City nonresident earnings tax, for the year 1981. Wage and tax statements issued to petitioner by Concord Construction Company, Andrew Catapano Industries, Andrew Catapano Enterprises,

Inc. and Andrew Catapano Co., Inc. were appended to the return and reflected wages, tips or other compensation in the total sum of \$26,148.00, from which New York State personal income tax of \$943.45 and New York City tax of \$113.09 was withheld. Also appended to the return was a statement indicating that petitioner had taken a Vow of Poverty with an organization known as "Worldwide Religious Order of Almighty God Section T-1". Petitioner claimed a refund on the return for the entire amount withheld of \$1,056.54.

2. On March 25, 1985, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1981 wherein petitioner's wage income of \$26,148.00 was considered subject to New York State personal income tax and New York City nonresident earnings tax.

3. Based on the Statement of Audit Changes, the Audit Division, on April 8, 1985, issued a Notice of Deficiency to petitioner asserting New York State and New York City personal income tax for 1981 of \$706.97, plus penalty of \$321.67 and interest of \$254.03, for a total due of \$1,282.67.

4. Petitioner took the position that he received no "income" during 1981, but rather received only wages in equal exchange for his labor and that labor is not subject to New York State and New York City personal income tax. Petitioner relies on various Federal cases cited in his brief. Petitioner did not dispute the calculation of the deficiency asserted against him nor did he present any evidence or argument with respect to the penalty asserted due.

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 Commission, December 31, 1984 and the authorities therein cited).

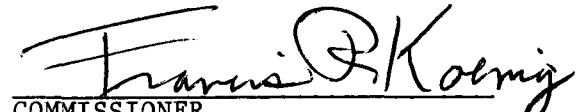
B. That the petition of Robert J. Bivolcic is denied and the Notice of Deficiency issued April 8, 1985 is sustained, together with such additional penalty and interest as may be due and owing.


DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1987


PRESIDENT


COMMISSIONER


COMMISSIONER