

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Thomas E. Hustead :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article(s) 22 of the Tax Law :
for the Year 1982.

State of New York :

ss.:

County of Albany :

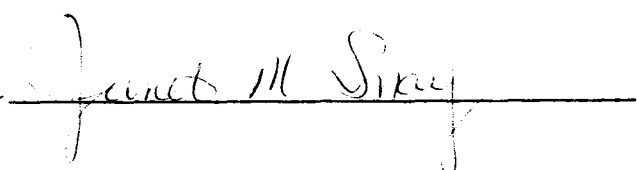
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 24th day of February, 1987, he/she served the within notice of decision by certified mail upon Thomas E. Hustead the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas E. Hustead
106 Bartram Road
Savannah, GA 31411

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
24th day of February, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174

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

February 24, 1987

Thomas E. Hustead
106 Bartram Road
Savannah, GA 31411

Dear Mr. Hustead:

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
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

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THOMAS E. HUSTEAD	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1982.	:	

Petitioner, Thomas E. Hustead, 106 Bartram Road, Savannah, Georgia 31411, 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 1982 (File No. 58541).

On July 14, 1986, petitioner executed a waiver of hearing and submitted his case for decision based upon the existing record. After due consideration, the State Tax Commission hereby renders the following decision.

ISSUE

Whether the Audit Division properly determined that a bonus paid to petitioner during that portion of the year in which petitioner was a resident of New York was not allocable between the resident and nonresident period and must, therefore, be included in its entirety, as taxable income for the resident period.

FINDINGS OF FACT

1. Thomas E. Hustead (hereinafter "petitioner") was an employee of General Motors Corporation (hereinafter "GM") who was transferred to Rochester, New York in 1976. Petitioner retired from his employment with GM in 1981 and, on September 29, 1982, moved to Savannah, Georgia where he

currently resides. For the year 1982, petitioner and his wife filed a joint New York State Resident Income Tax Return on which they claimed to have been New York State residents for nine months of said year.¹

2. On May 29, 1984, the Audit Division issued to petitioner a Statement of Audit Changes asserting additional tax due in the amount of \$2,968.29, plus interest. Petitioner's 1982 New York State personal income tax liability was computed by the Audit Division based upon its determination that petitioner's bonus payment received from his previous employer, GM, was received in consideration of past services performed in New York and was paid while petitioner was a New York resident. Accordingly, on February 6, 1985, the Audit Division issued a Notice of Deficiency in the amount of \$2,968.29 plus interest of \$560.26, for a total amount due of \$3,528.55.

3. On June 27, 1985, the Audit Division issued to petitioner a Notice of Claim asserting, pursuant to section 689(d)(1) of the Tax Law, a greater deficiency than that asserted in the Notice of Deficiency dated February 6, 1985. The Notice of Claim contained the following explanation and recomputation of petitioner's tax deficiency:

"The greater deficiency results from the following determination:
(1) The annual bonus distribution amount of \$126,838.92 was paid on January 10, 1982 as stated in your letter of June 9, 1985 and is properly includable on the return filed for the resident period.
(2) Dividends of \$2,901.60 and insurance of \$83.00 have been applied to your resident period based on the 9 month period of residence. (3) A recomputation of your 1982 liability shows that a return is required based on a 9 month period of residence and no return is required for the non-resident period.

1 The Audit Division issued a Statement of Audit Changes, Notice of Deficiency and Notice of Claim to petitioner, Thomas E. Hustead and to Mae C. Hustead, his wife, solely by reason of their having filed a joint return. The bonus payment at issue was paid to Thomas E. Hustead. All references to "petitioner" herein shall, therefore, refer solely to Thomas E. Hustead.

A computation of the greater deficiency follows:

	<u>TOTAL INCOME</u>	<u>RESIDENT PERIOD</u>	<u>NONRESIDENT PERIOD</u>	<u>NEW YORK SOURCES</u>
Bonus distribution amount	\$126,838.92	\$126,838.92	\$ -0-	\$ -0-
Dividends on bonus account	2,901.60	2,176.20	725.40	-0-
G. M. Insurance	83.00	62.25	20.75	-0-
Interest income reported	15,880.67	11,910.50	3,970.17	-0-
Dividends reported	46,100.86	34,575.65	11,525.21	-0-
Business income reported	18,137.81	13,603.36	4,534.45	-0-
Capital loss	(3,000.00)	(3,000.00)	-0-	-0-
Pensions, Line 10, Schedule IT-360	2,266.20	1,699.65	566.55	-0-
Pensions, Line 11, Schedule IT-360	40,013.94	28,238.19	11,775.75	-0-
Total income	<u>\$249,223.00</u>	<u>\$216,104.72</u>	<u>\$33,118.28</u>	<u>\$ -0-</u>
Less: Pension exclusion	21,699.65	21,699.65	566.55	-0-
Total income corrected	<u>\$227,523.35</u>	<u>\$194,405.07</u>	<u>\$32,551.73</u>	<u>\$ -0-</u>
		<u>RESIDENT PERIOD</u>		
Total income corrected (brought forward)		\$194,405.07		
Itemized deductions		23,604.49		
Balance		<u>\$170,800.58</u>		
Exemptions prorated (\$1,600.00 x 9/12)		1,200.00		
New York taxable income		<u>\$169,600.58</u>		
Tax on income		\$ 22,304.08		
Maximum tax benefit		4,387.74		
Total tax due		<u>\$ 17,916.34</u>		
Tax withheld	\$ 6,341.95			
Estimated tax paid	10,542.00			
Total	<u>\$16,883.95</u>			
Less: Refund previously issued	2,216.51			
Net payments		<u>14,667.44</u>		
Corrected tax due		<u>\$ 3,248.90</u>		
Tax due per deficiency dated 2/6/85		<u>2,968.29</u>		
Additional Personal Income Tax Subject to Notice of Claim		\$ 280.61		

This Notice of Claim of \$280.61 is subject to interest from the due date of the return to the date of payment."

4. From 1976 until his retirement in 1981, petitioner was the General Manager of the Rochester Products Division of GM. The bonus payment paid to petitioner in 1982 was based upon GM profits for the years 1978 and

1979. Payments were made from GM on the basis of 20 percent in the year of the award and 20 percent in each of the next four years, provided that the bonus participant had met the bonus and salary committee requirements during each of the said four years. Bonus payments consisted of 50 percent cash and 50 percent GM common stock. Annual bonus payments for a particular calendar year were paid to petitioner on January 10th of that year. For the year 1982, petitioner received from GM a bonus distribution of \$126,838.92 on January 10, 1982. Petitioner also received the sum of \$2,901.60 which represented dividends paid on the remaining stock in his bonus accounts. These dividend payments were paid in equal installments in March, June, September and December of 1982. Petitioner also received the sum of \$83.00 from GM as income from an umbrella liability insurance policy. The Audit Division determined that only that portion of the dividends and insurance payments received during petitioner's residency in New York State were taxable to him as a New York resident, but determined that the entire annual bonus distribution amount of \$126,838.92 was taxable to petitioner since it was paid to him while he was a resident. Petitioner contends that he has properly allocated his bonus payment, 75 percent to New York and 25 percent to Georgia, based upon his change of residence on September 29, 1982. Petitioner has paid tax to New York State based upon this 75 percent allocation and to the State of Georgia based upon a 25 percent allocation and contends that the Audit Division's determination results in double taxation on the 25 percent of the bonus payment allocated to Georgia since the State of Georgia has advised him that his original allocation formula

was correct. Petitioner further contends that these bonus payments were, in fact, pension payments which were neither derived from nor connected with New York since they were received from GM in Detroit, Michigan.

CONCLUSIONS OF LAW

A. That 20 NYCRR 148.5(a)(1) provides, in pertinent part, as follows:

"The New York taxable income for the portion of the taxable year during which an individual was a resident must be determined... as if such individual's taxable year for Federal income tax purposes were limited to the period of resident status."

B. That section 654(i) of the Tax Law provides, in pertinent part, as follows:

"If the status of a taxpayer changes during his taxable year from resident to nonresident... the taxpayer shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status the total taxable amount of a lump sum distribution accruing prior to the change of status".

C. That the entire bonus distribution for the year 1982 which was paid to petitioner by his former employer, GM, was received by petitioner on January 10, 1982, while he was a resident of New York State. Furthermore, the amount of said bonus distribution payment was not based upon a projection of GM's profits for a period in which petitioner was a nonresident but was based upon GM's profits for 1978 and 1979, the entire period during which petitioner was employed in and resided in New York State. The entire bonus distribution must, therefore, be included on petitioner's 1982 personal income tax return filed for the resident period.

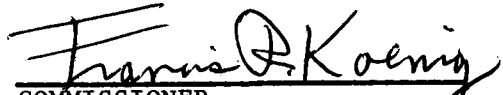
D. That the petition of Thomas E. Hustead is denied and the Notice of Deficiency dated February 6, 1985 and the Notice of Claim dated June 27, 1985 are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 24 1987


PRESIDENT


COMMISSIONER


COMMISSIONER