

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Clyde E. and Norma King :

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 1984.

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 Clyde E. and Norma King the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Clyde E. and Norma King
103 Stratford Road
Goldsboro, North Carolina 27530

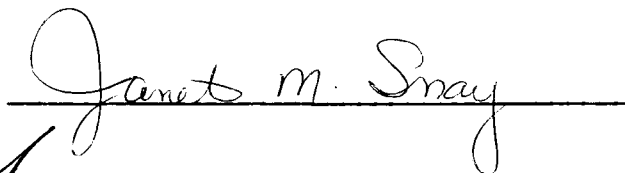
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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

Clyde E. and Norma King
103 Stratford Road
Goldsboro, North Carolina 27530

Dear Mr. & Mrs. King:

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

STATE TAX COMMISSION

In the Matter of the Petition

of

CLYDE E. AND NORMA KING

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 Year 1984.

Petitioners, Clyde E. and Norma King, 103 Stratford Road, Goldsboro, North Carolina 27530, 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 1984 (File No. 64858).

On November 3, 1986, petitioners waived a hearing before the State Tax Commission and agreed to submit the matter for decision based on the Department of Taxation and Finance file and additional documents. After review of the record, the State Tax Commission hereby renders the following decision.

ISSUE

Whether days worked at an office in his home in North Carolina by petitioner Clyde E. King during 1984 are properly considered days worked outside of New York State and New York City for income allocation purposes.

FINDINGS OF FACT

1. Petitioners, Clyde E. and Norma King, filed a New York State Nonresident Income Tax Return with City of New York Nonresident Earnings Tax for 1984.

2. On the return, petitioners reported \$126,923.00 in Federal salary income and \$45,693.00 in New York State and New York City salary income.

3. The sum of \$126,923.00 represented petitioner Clyde E. King's salary income from the New York Yankees. Mr. King's income was allocated on the basis of 130 days spent in New York State and New York City out of a total of 366 days in the year.

4. On July 3, 1985, the Audit Division issued to petitioners a Statement of Audit Changes asserting \$1,142.11 in additional New York State personal income tax and \$80.83 in additional New York City nonresident earnings tax. The statement explained as follows:

"Days worked at home do not form a proper basis for allocation of income by a nonresident. Any allowance claimed for days worked outside New York State must be based upon the performance of services which because of the necessity of the employer obligate the employee to out-of-State duties in the service of his employer. Such duties are those which by their very nature, cannot be performed in New York.

Applying the above principles to the allocation formula, normal work days spent at home are considered days worked in New York.

As interest income is an intangible item, it is not considered New York income.

Your limitation percentage has been adjusted to reflect the change in income.

Also, your maximum tax benefit has been adjusted to reflect the change in personal service income."

The basis of the adjustment was the increase by the Audit Division of days worked in New York from 130 to 236. The additional 106 days were days claimed to have been worked by Mr. King at his North Carolina home.

5. On August 1, 1985, the Audit Division issued a Notice of Deficiency to petitioners for \$1,222.94 in additional tax, plus interest.

6. Petitioner Clyde E. King became vice president and general manager of the New York Yankees effective April 1, 1984. It appears that he was employed by the Yankees prior to that date, but the capacity in which he served is not in the record.

7. Mr. King's contract with the New York Yankees provided, in pertinent part, as follows:

"3 - Duties:

(a) King shall serve in the capacity of Vice President and General Manager of the Club reporting directly to George M. Steinbrenner. King shall serve on a continuing basis as General Manager in New York from at least February 1st of each year of the Contract through Spring Training, the Championship Season, any Playoffs or World Series games in which the Yankees are participants until about November 1st of each contract year.

(b) During the months of November, December and January of each contract year, King may return to North Carolina and perform his duties from there. However, if in his judgment during these three months it becomes impossible for King to perform his duties from North Carolina, he may come to New York to perform such duties. In this event, the Yankees will pay reasonable travel expenses; King shall pay for his lodging, meals and other incidental expenses."

8. Mr. King's duties consisted of:

- a) maintaining the morale of existing personnel;
- b) assisting the manager and others in trading for and maintaining improved personnel throughout the year;
- c) during the season, giving the manager advice on upcoming opponents and their current physical condition and current strengths and weaknesses;
- d) spotting and reporting to the manager and owner personal problems and strengths; and

e) from November through January, negotiating trades to improve the Yankees for the upcoming season.

9. In response to a questionnaire sent to petitioners by the Audit Division, petitioner Clyde E. King reported that he worked the following days for his employer:

- a) 43 days in Fort Lauderdale, Florida, for spring training;
- b) 9 days outside of New York for exhibition games played between the end of spring training and the opening of the baseball season;
- c) 78 days outside of New York during the season;
- d) 130 days in New York during and after the season;
- e) 105 days at the office in his Goldsboro, North Carolina, home.

CONCLUSIONS OF LAW

A. That Tax Law § 632(a) provides that the New York adjusted gross income of a nonresident individual shall be the net amount of items of income, gain, loss and deduction entering into his Federal adjusted gross income, derived from or connected with New York sources.

B. That Tax Law § 632(c) provides that if a business, trade, profession or occupation is carried on partly within and partly without New York, as determined under the regulations, the items of income, gain, loss and deduction derived from or connected with New York sources shall be determined by apportionment and allocation under such regulations.

C. That 20 NYCRR 131.18 provides, in pertinent part, as follows:

"(a) If a nonresident employee...performs services for his employer both within and without New York State, his income derived from New York State sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within New York State bears to the total number of working days employed both within and without New York State.... However, any allowance claimed for days worked outside New York State must be based upon the performance of services which of necessity, as distinguished from convenience, obligate the employee to out-of-state duties in the service of his employer."

D. That, during the period at issue, former Administrative Code of the City of New York § U 46-2.0 provided for a tax on wages of nonresidents earned within the City of New York. Such wages are generally allocated by the State Tax Commission by the same formula under which wages are allocated under the Tax Law.


E. That the services performed by petitioner Clyde E. King at petitioners' home in North Carolina between seasons were not performed there of necessity rather than for Mr. King's own convenience. As noted in the contract, Mr. King "may return to North Carolina and perform his duties from there" during the months of November, December and January. Accordingly, the Audit Division's allocation was correct.

F. That the petition of Clyde E. and Norma King is denied and the Notice of Deficiency issued August 1, 1985 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1987


PRESIDENT


COMMISSIONER


COMMISSIONER