

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Calvin J. & Patricia A. McKiernan : 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 :

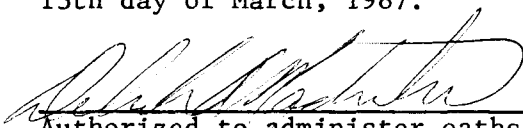
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of March, 1987, he/she served the within notice of Decision by certified mail upon Calvin J. & Patricia A. McKiernan the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Calvin J. & Patricia A. McKiernan
Box 15
Moriah Center, NY 12961

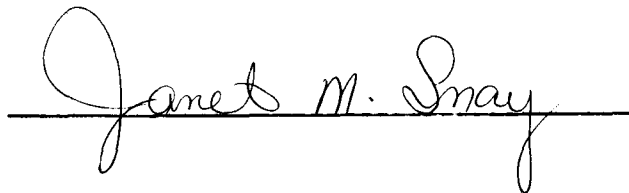
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
13th day of March, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



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

March 13, 1987

Calvin J. & Patricia A. McKiernan
Box 15
Moriah Center, NY 12961

Dear Mr. & Mrs. McKiernan:

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	:	
CALVIN J. MCKIERNAN & PATRICIA A. MCKIERNAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1982.	:	

Petitioners, Calvin J. McKiernan and Patricia A. McKiernan, Box 15, Moriah Center, New York 12961, 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. 64906).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, W.A. Harriman Campus, Albany, New York, on November 6, 1986 at 10:45 A.M. Petitioners appeared by Calvin J. McKiernan. The Audit Division appeared by John P. Dugan, Esq. (Arnold Glass, Esq., of counsel).

ISSUE

Whether petitioners, residents of New York State, are liable for New York State personal income tax on monies earned in Vermont.

FINDINGS OF FACT

1. On July 1, 1985, the Audit Division issued to petitioners, Calvin J. McKiernan and Patricia A. McKiernan, a Statement of Audit Changes, asserting personal income due for the year 1982 of \$809.52 plus penalty of \$202.38 and interest of \$191.79 for a total due of \$1,203.69.

2. On the basis of information contained in their Federal tax return and that provided by petitioners, the Audit Division had computed their State income tax liability as follows:

Federal wages	\$22,128.00
Standard deduction	2,500.00
Exemptions	<u>4,800.00</u>
New York taxable income	\$14,828.00

3. The statement urged petitioners to amend their Federal and State tax returns, stating, in part, "since you own a home and paid real estate taxes, Vermont income tax and sales tax, I am sure you could take itemized deductions. All these taxes are easily verified and would reduce your New York tax liability plus your Federal liability. You still have time to amend 1982 through 1984."

4. Amended returns were not filed by petitioners. Therefore, on October 8, 1985, the Audit Division issued against petitioners a Notice of Deficiency asserting income tax due for the year 1982 in the amount of \$809.52 plus penalty and interest.

5. Mr. and Mrs. McKiernan are residents of Moriah Center, New York. Mr. McKiernan works in Vermont. His employer withholds Vermont and Federal income taxes. Petitioners have no income other than Mr. McKiernan's wages from work performed in Vermont.

6. Petitioners believed that since all their income was earned in Vermont, they were not required to file New York State income tax returns, and they did not do so. They also believed that the term "Total New York income" as used on line "3" of the New York State Resident Income Tax Return referred only to income earned in New York.

7. In 1982, petitioners paid Vermont income tax in the amount of \$530.66.

CONCLUSIONS OF LAW

A. That every resident of New York State who is required to file a Federal income tax return must file a New York State Resident Income Tax Return (Tax Law § 651[1][A]).

B. That for New York State tax purposes, petitioners were required to report their Federal adjusted gross income as total income, including wages earned by Mr. McKiernan in Vermont. Petitioners then should have adjusted their income by making any additions or subtractions provided for under New York State Tax Law, as suggested in the statement of Audit Changes (Tax Law § 612). "Total New York income", as the term is used on line "3" of the Resident Income Tax Return, means Federal adjusted gross income plus or minus the New York adjustments. It does not mean money earned in New York State.

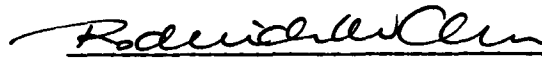
C. That inasmuch as petitioners paid Vermont income tax of \$530.66 on income earned entirely in Vermont, they are entitled to a resident tax credit in that amount (Tax Law § 620). The Audit Division is directed to recompute petitioners' tax liability accordingly.

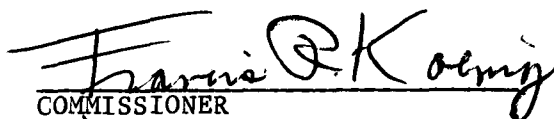
D. That the petition of Calvin J. McKiernan and Patricia A. McKiernan is granted to the extent indicated in Conclusion of Law "C"; that the Notice of Deficiency issued on October 8, 1985 shall be modified accordingly; and that in all other respects, the petition is denied.

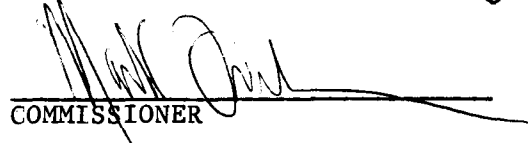
DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987


PRESIDENT


COMMISSIONER


COMMISSIONER