

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

John S. & Sara J. Kadash :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Year 1972. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of August, 1979, he served the within Notice of Decision by certified mail upon John S. & Sara J. Kadash, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John S. & Sara J. Kadash  
22 New Mexico St.  
Jackson, NJ 08527

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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  
8th day of August, 1979.

William J. [Signature]

Jay Vredenburg

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

August 8, 1979

John S. & Sara J. Kadash  
22 New Mexico St.  
Jackson, NJ 08527

Mr. & Mrs. Kadash:

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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Chyzewsky", with a stylized flourish at the end.

cc: Petitioner's Representative

Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
JOHN S. KADASH and SARA J. KADASH : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article :  
22 of the Tax Law for the Year 1972 :  
:

On July 24, 1978, petitioners informed the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

Whether petitioner John S. Kadash properly allocated his salary income to sources within and without New York State during his nonresident period.

1. Petitioners, John S. Kadash and Sara J. Kadash, timely filed New York State resident and nonresident income tax returns for 1972. In May of 1973, petitioners filed amended resident and nonresident returns for said year showing a refund due of \$132.13.

2. On November 26, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioners, asserting personal income tax of \$131.82, plus interest of \$6.09, for a total of \$137.91. Said Notice was issued on the grounds that no services were performed outside New York State while petitioner John S. Kadash was a nonresident. As a result, no allocation was permitted.

3. On April 7, 1972, petitioner John S. Kadash moved to New Jersey. He continued to work in New York State and as a result, he allocated the salary of \$9,180.00 paid to him by the American Journal of Nursing. This was done on the basis of the ratio that 151 days worked in New York State bore to 248 total days worked in the year. Said allocation was based on 365 total days in the year rather than the number of days in the nonresident period.

4. In his letter of August 9, 1973, petitioner John S. Kadash stated that he did not perform work outside New York State during his nonresident period. The schedule of "Allocation of Personal Service Compensation" which was attached to his letter showed 269 total days in his nonresident period, of which 152 were working days and all of which were days worked in New York State.

5. During the period wherein he was a resident of New York State, petitioner John S. Kadash worked for Hoechst Orde Corporation, a New Jersey employer. The employer properly withheld \$95.94 from petitioner's wages as New Jersey Emergency Transportation Tax. Petitioner was allowed the proper credit under section 620 of the Tax Law.

#### CONCLUSIONS OF LAW

A. That petitioner John S. Kadash, by his own admission, performed no services outside New York State with respect to the salary paid to him by the American Journal of Nursing; therefore, he is not entitled to allocate his salary income.

B. That petitioners' income tax liability, as shown on the Notice of Deficiency dated November 26, 1973, was determined correctly.

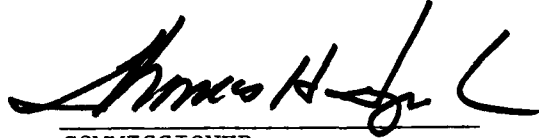
C. That the petition of John S. Kadash and Sara J. Kadash is denied and the Notice of Deficiency issued November 26, 1973 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
August 8, 1979

STATE TAX COMMISSION

  
PRESIDENT

\_\_\_\_\_  
COMMISSIONER

  
COMMISSIONER