

STATE OF NEW YORK
STATE TAX COMMISSION

Kavanagh, John H.
Personal Income
Art. 22 - 1971

In the Matter of the Petition

of

John H. Kavanagh

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1961

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of February, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon John H. Kavanagh (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John H. Kavanagh
4851 Primrose Path
Siesta Key
Sarasota, Florida
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

26th day of February, 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

JOHN H. KAVANAGH

DECISION

FOR REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 22 OF THE TAX LAW FOR THE
YEAR 1961

John H. Kavanagh having filed a claim for refund of personal income taxes paid under Article 22 of the Tax Law for the year 1961 and such claim having been denied, and a petition for refund having been subsequently filed, and a hearing having been held thereon at the office of the State Tax Commission, 80 Centre Street, New York, New York on March 30, 1966 before Solomon Sies, Hearing Officer, and the taxpayer having been present, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That prior to June 1, 1960 the taxpayer was a resident of the State of Illinois. On that date he effected a change of domicile and became a resident of this State.

(2) That during the year 1960 and prior thereto the taxpayer was a Regional Manager of the Chicago office of the Metropolitan Life Insurance Company with respect to Group Life, Group Accident and Health, Group Hospital Expense, Group Surgical Operation, Group Insurance for Death and Dismemberment by Accidental Means, Group Physician's Attendance Benefits and Group Medical Expense Insurance. Under his agreement with the Metropolitan Life Insurance Company the taxpayer received a fixed salary and, in addition thereto, was paid a first-year cash

overriding commission on the first-year premium paid on each sale of all new group business to the credit of his unit. Prior to his transfer to New York and while he was a resident of Illinois working in the Chicago office, there were placed to the credit of his unit new business from numerous group insurance policies and contracts written.

(3) That payments to the taxpayer of commissions based upon group business were made to the taxpayer by crediting him monthly with portions of the first-year premium in accordance with the memorandum of the employer dated November 8, 1954 which provided as follows:

"All modes of premium payment will be treated as monthly for the purpose of determining commission credits and it will be assumed that all premiums due will be received.

Commissions will be calculated on a policy year basis - prorated - and credited monthly.

(A) If the effective date of a particular issue coincides with the renewal date, the procedure is obvious.

(B) If the effective date of a particular issue is other than the renewal date;

(a) The approximate first year commissions will be credited monthly from the date such issue is made effective to the next renewal date of the particular contract, and, commencing at the renewal date, 1/12th of the balance of such approximate first year commissions will be credited monthly during that policy year.";

that pursuant to such memorandum crediting the taxpayer with payments, the taxpayer received monthly commissions anywhere from twelve to twenty-three months after the issuance of the policies. Monthly commissions were therefore received by the taxpayer during the year 1961 with respect to insurance policies, issued prior to June 1960. On that date the amount of monthly commissions

could be calculated since the amount of the first-year premium was known at the time of the issuance of the policies.

(4) That the taxpayer filed his petition for refund contending that group commissions in the amount of \$4,139.47 based on policies written prior to June 1, 1960 and paid to the taxpayer during 1961, were accrued to the taxpayer on that date, and that the taxpayer is, therefore, entitled to a refund of \$701.54 taxes computed on such commissions.

(5) That in the agreement of the employer with the taxpayer as set forth in the employer's letter of February 15, 1952 (statement # 10 on page 5 of such letter) it is provided that "When a group insurance policy or group annuity contract is lifted by the company * * * the company will require a refund of all commission."; that the taxpayer admitted (page 14 of the transcript of testimony) that one of the reasons for prorating the commissions over the life of the policy is that the group insurance contract could be cancelled, in which event there would be an overpayment of commissions if the entire amount were paid on the date of the issuance of the policy.

(6) That on June 1, 1960, the date of change from non-resident to resident, the commissions on the policies issued prior to the date were subject to the contingency that the policies could be cancelled.

Upon all the foregoing facts, the State Tax Commission hereby

DECIDES:

(A) That by virtue of finding of facts ## 5 and 6, commission income based upon the issuance of policies prior to the change of status from nonresident to resident was not accrued to the taxpayer as of the date of the change, that is, on June 1,

1960, in accordance with the intent and meaning of section 654(c)(2) of the Tax Law.

(B) That accordingly such commission income was earned by the taxpayer during the year 1961 and not prior thereto as contended by the taxpayer.

(C) That the taxpayer's petition for refund is, therefore, denied, and the taxes paid by the taxpayer together with his return do not include any taxes which were not lawfully due and owing.

Dated: Albany, New York the day of , 19 .
February 26, 1971 STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Bruce Manley
COMMISSIONER

Milton Korman
COMMISSIONER