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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
DONALD C. PATTERSON and
MARGUERITE C. PATTERSON
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) 1969.

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 4th day of February, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Donald C. Patterson and Marguerite C. Patterson (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Donald C. Patterson
Buxton Road
Chatham, New Jersey 07928
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

4th day of February, 1974

[Signature]

[Signature]

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Gilbert I. Falk

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

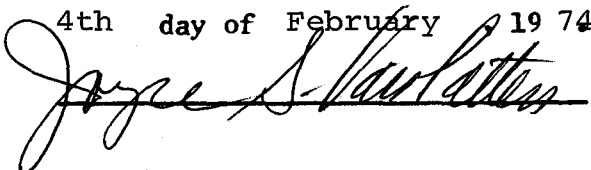
Mr. Gilbert I. Falk
10 East 40th Street
New York, New York 10016

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

4th day of February 1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Mario A. Procaccino
~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 4, 1974

Mr. & Mrs. Donald C. Patterson
Buxton Road
Chatham, New Jersey 07928

Dear Mr. & Mrs. Patterson:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DONALD C. PATTERSON and	:	
MARGUERITE C. PATTERSON	:	DECISION
	:	
for Redetermination of Deficiency or for	:	
Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1969.	:	

Petitioners, Donald C. Patterson and Marguerite C. Patterson, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1969. (File No. 9-33261320).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on October 18, 1973, at 9:15 A.M. Petitioners appeared by Gilbert I. Falk. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of Counsel).

ISSUE

Were salary payments received by petitioner, Donald C. Patterson, a nonresident, from his employer while on terminal sick leave during the year 1969 subject to New York State personal income tax?

FINDINGS OF FACT

1. Petitioners, Donald C. Patterson and Marguerite C. Patterson, filed a New York State income tax nonresident return for the year 1969. They reported salary income earned by petitioner, Donald C. Patterson, from Chemical Bank in the sum of \$46,848.43 for Federal income tax purposes and in the sum of \$0.00 for New York State income tax purposes. Attached to the return was a New York State withholding

tax statement indicating wages of \$46,848.43 paid and \$3,466.52 in New York State income tax withheld therefrom by the employer. They claimed a refund on said return of said sum of \$3,466.52. They received a refund check in said amount on June 22, 1970.

2. On June 26, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Donald C. Patterson and Marguerite C. Patterson, imposing personal income tax for the year 1969 in the sum of \$1,787.50. The amount of tax due was arrived at by allocating the salary income received during said year by petitioner, Donald C. Patterson, from Chemical Bank at the same ratio of allocation reported by him for the years 1967 and 1968.

3. Petitioner, Donald C. Patterson, was employed by Chemical Bank for over 20 years until he retired on January 1, 1970. He worked out of the New York City office of the bank.

4. On September 28, 1968, petitioner, Donald C. Patterson, sustained a severe stroke which totally and permanently disabled him. He received a social security disability pension effective in April 1969. He is still permanently disabled.

5. Chemical Bank continued to pay petitioner, Donald C. Patterson, his regular salary from September 28, 1968 until January 1, 1970. He did not render any services of any nature for his employer during this period. He did not enter New York State at any time during this period. He was considered by the Chemical Bank to be on sick leave during this period. He retired and commenced receiving pension payments under the Chemical Bank pension plan on January 1, 1970.

6. The average of petitioner, Donald C. Patterson's income received from Chemical Bank allocable to New York State for the years 1967 and 1968 was 92%.

7. Petitioners, Donald C. Patterson and Marguerite C. Patterson, were residents of the State of New Jersey during the years 1967, 1968 and 1969.

CONCLUSIONS OF LAW

A. That the terminal sick leave salary received by petitioner, Donald C. Patterson, a nonresident of the State of New York, from Chemical Bank during the year 1969 did not qualify as annuity in accordance with the meaning and intent of 20 NYCRR 131.4(d).


B. That since the terminal sick leave salary received by petitioner, Donald C. Patterson, during the year 1969 did not qualify as an annuity under 20 NYCRR 131.4(d), therefore, the amount of said terminal leave salary taxable to New York State should have been based on the ratio of his salary earned in New York State to his total salary for the prior three years in accordance with the meaning and intent of 20 NYCRR 131.18. However, since no proof was submitted as to the ratio for the year 1966, the Income Tax Bureau could properly compute the allocation formula based on the ratios for the years 1967 and 1968 in accordance with the meaning and intent of 20 NYCRR 131.21.

C. That if the terminal sick leave salary received by petitioner, Donald C. Patterson, during the year 1969, was to be considered to be regular salary income and not a retirement benefit, then all of said income would be taxable as income earned in New York State since sick days are considered non-working days in accordance with the meaning and intent of 20 NYCRR 131.16. This would be a less favorable result for petitioner than the treatment of said income as stated in the Statement of Audit Changes dated June 26, 1972.

D. That the petition of Donald C. Patterson and Marguerite C. Patterson is denied and the Notice of Deficiency issued June 26, 1972, is sustained.

DATED: Albany, New York
February 4, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER