

STATE OF NEW-YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

John E. Kucera :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1972. :

State of New York
County of Albany

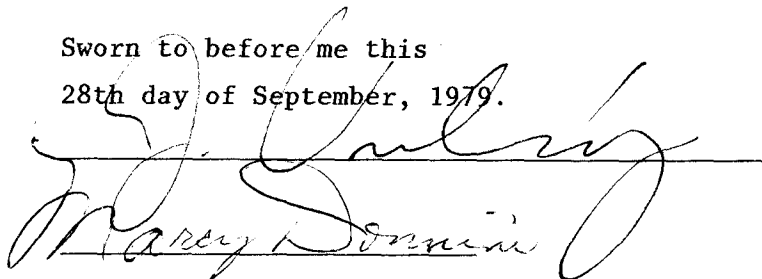
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon John E. Kucera, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John E. Kucera
Cedar Cliff Rd.
Riverside, CT

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
28th day of September, 1979.


Nancy Sornini

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

John E. Kucera :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
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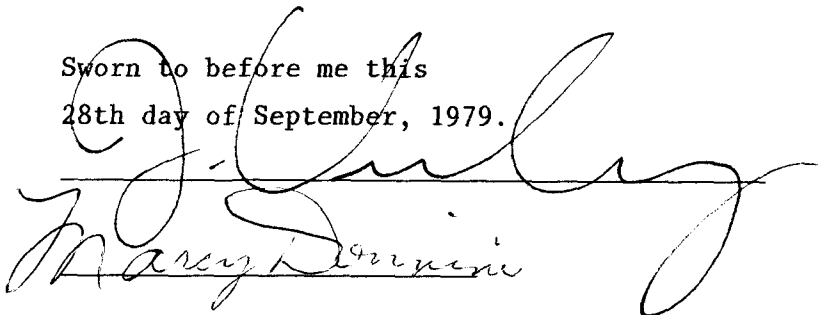
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon John J. Flynn the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. John J. Flynn
Alter, LeFevre, Raphael, Loury & Gould, P.C.
530 Fifth Ave.
New York, NY 10036

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 representative of the 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
28th day of September, 1979.


Mary Annini



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

John E. Kucera
Cedar Cliff Rd.
Riverside, CT

Dear Mr. Kucera:

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 cursive script, appearing to read "Robert B. Ullery".

cc: Petitioner's Representative
John J. Flynn
Alter, LeFevre, Raphael, Loury & Gould, P.C.
530 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN E. KUCERA	:	DECISION
For Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1972.	:	

Petitioner, John E. Kucera, Cedar Cliff Road, Riverside, Connecticut, 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 1972 (File No. 12184).

A formal hearing was held before George Murphy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 9, 1977 at 2:45 P.M. Petitioner appeared by Alter, Lefevre, Raphael, Lowry and Gould, PC (John J. Flynn, III, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the contributions, interest, dividends, and appreciation included in the lump-sum distribution which was made to the nonresident petitioner in 1972, from a noncontributory pension and profit sharing plan, is subject to New York State personal income tax.

FINDINGS OF FACT

1. Petitioner, John E. Kucera, was employed in the New York City offices of Ted Bates and Co., Inc., from March 31, 1957 to March 31, 1972. On March 31, 1972, petitioner terminated his employment with Ted Bates and Co., Inc. because of a disability. As a result of this disability, petitioner received (pursuant to the terms of his employment agreement) a lump-sum distribution of \$168,894.00.

Of this amount, \$156,139.00 was reported as a long-term capital gain, and \$12,598.00 was reported as ordinary income on petitioner's Federal income tax return which he filed for 1972.

2. The lump-sum distribution made to petitioner from the noncontributory pension and profit sharing plan consisted of employer contributions of \$90,538.03, plus accrued interest, dividends, and gains of \$78,355.98 which were earned by the trustee of the plan during the period March 31, 1958 through March 31, 1972.

3. On March 4, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, which adjusted his income by adding to the reported total income for New York State, both the long-term capital gain realized from the lump-sum distribution, and other income received as a result of the termination of his employment. Based on this Statement, the Bureau issued a Notice of Deficiency on March 31, 1975 for 1972, asserting additional income tax of \$18,920.57, plus accrued interest of \$2,779.62, for a total amount due of \$21,700.19.

4. Petitioner concedes that the contribution made by his former employer to the pension and profit sharing plan is subject to New York State personal income tax; however, petitioner challenges the validity of taxing that portion of the lump-sum distribution received by him which represents accrued interest, dividends, and gains realized by the trustee of the pension and profit sharing plan, on the employer's contributions made to the fund.

5. The petitioner concedes that the earnings which he reported as other income represent wages attributable to New York State which were accrued prior to the termination of his employment. Therefore, this portion of the adjustment is not at issue.

CONCLUSIONS OF LAW

A. That the lump-sum distribution received by petitioner as a result of a disability, does not qualify as an annuity (20 NYCRR 131.4(d)). The lump-sum distribution is attributable to services performed wholly in New York State. The entire amount included in petitioner's Federal adjusted gross income is likewise includible in New York adjusted gross income (20 NYCRR 131.18).

B. That the petition of John E. Kucera is denied, and the Notice of Deficiency issued on March 31, 1975 is sustained.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER