

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Gordon Clark

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 1974. :

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 18th day of January, 1980, he served the within notice of Decision by certified mail upon Gordon Clark, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gordon Clark
c/o Taft & Kaminsky
New York, NY 10019

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
18th day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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under Article 22 of the Tax Law
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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 18th day of January, 1980, he served the within notice of Decision by certified mail upon Arthur C. Kaminsky 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. Arthur C. Kaminsky
18 West 55th St.
New York, NY 10019

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
18th day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 18, 1980

Gordon Clark
c/o Taft & Kaminsky
18 W. 55th St.
New York, NY 10019

Dear Mr. Clark:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Arthur C. Kaminsky
18 West 55th St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GORDON CLARK
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1974.

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DECISION

Petitioner, Gordon Clark, c/o Taft & Kaminsky, Esqs., 18 West 55th Street, New York, New York 10019, 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 1974 (File No. 20464).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1978 at 1:15 P.M. Petitioner appeared by Arthur C. Kaminsky, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether a bonus paid to the nonresident petitioner during 1974 was New York-source taxable income and, if so, whether it was allocable on the same basis as his salary income.

FINDINGS OF FACT

1. Petitioner, Gordon Clark, a professional hockey player, timely filed a New York State personal income tax nonresident return for 1974, on which he reported his total salary income derived from a New York State hockey club. He did not report a \$20,000.00 bonus received during said year.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioner, on which it contended that the salary income and the bonus were

allocable as New York-source income, on the percentage basis that games played within New York State bore to games played everywhere. Accordingly, the Bureau issued a Notice of Deficiency for 1974 on July 25, 1977, in the amount of \$723.78 in personal income tax, less a \$715.12 overpayment shown on the tax return, plus \$1.62 in interest, for a total due of \$10.28.

3. Petitioner conceded that the Income Tax Bureau correctly allocated his salary income to New York. However, he contended that the bonus was paid to a nonresident petitioner by a Massachusetts corporation as an inducement to sign a contract to play professional hockey for a Massachusetts hockey club; therefore, said bonus was distinctly separate from the salary which petitioner subsequently earned playing for a New York hockey club. Accordingly, no part of the bonus income should be considered as New York source income.

4. The \$20,000.00 bonus payment was paid to petitioner on May 15, 1974, by the Boston Professional Hockey Association which owned the National Hockey League team, the "Boston Bruins". Said payment constituted a partial payment of the total bonus amount payable of \$40,000.00. The balance of the bonus was to be paid to petitioner in subsequent years, if and when he met certain requirements and attained certain achievements as a professional hockey player. The purpose of the initial \$20,000.00 payment was consideration for petitioner's signing a three-year contract with the association to play for the Boston Bruins or its minor league team. The Boston Bruins' minor league team during the 1974-1975 season was the Rochester Americans Hockey Club, Rochester, New York. Petitioner signed the three-year contract on May 9, 1974. Said contract incorporated provisions of the bonus payments' arrangement as appendums A and B, and the commencement date of the contract was October 1, 1974. The contract also contained the salary which petitioner would receive for performing services for either the major or the minor league team.

5. On or about September 10, 1974, petitioner reported to the Boston Bruins' training camp in Massachusetts, and during this time, he played in several exhibition games. Petitioner was not compensated for the training time. In October he was assigned and reported to the Rochester hockey club where he played 31 regular season games, of which 22 were played in New York State.

CONCLUSIONS OF LAW

A. That the \$20,000.00 bonus payment to petitioner, Gordon Clark, was paid to him in accordance with provisions of his employment contract, and was compensation in consideration for services to be performed by him. Therefore, said bonus payment is allocable as New York-source income in the same manner as his salary income (Stephen M. and Starla Thompson, State Tax Commission decision, July 20, 1973). The bonus payment in 1974 was connected with and was derived from New York sources as allocated by the Income Tax Bureau, in accordance with the meaning and intent of section 632 of the Tax Law.

B. That the petition of Gordon Clark is denied and the Notice of Deficiency issued on July 25, 1977 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JAN 18 1980

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER


COMMISSIONER