

STATE OF NEW YORK  
STATE TAX COMMISSION

\_\_\_\_\_ :  
In the Matter of the Petition :

of

Edward H. Montray :

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 Years 1972 & 1973. \_\_\_\_\_ :

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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Edward H. Montray, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward H. Montray

49 Carlough Rd.

Upper Saddle River, NJ 07458

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  
21st day of March, 1980.

Joanne Knopp



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

March 21, 1980

Edward H. Montray  
49 Carlough Rd.  
Upper Saddle River, NJ 07458

Dear Mr. Montray:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
EDWARD H. MONTRAY  
for Redetermination of Deficiencies or  
for Refund of Personal Income Tax under  
Article 22 of the Tax Law for the Years  
1972 and 1973.

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DECISION

Petitioner, Edward H. Montray, 49 Carlough Road, Upper Saddle River, New Jersey 07458, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File Nos. 13763 and 12262).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 19, 1978 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

- I. Whether the Income Tax Bureau properly disallowed petitioner's allocation of salary income to out-of-state sources on his 1972 tax return.
- II. Whether the money paid to Edward H. Montray in the form of termination pay from Joc Oil USA, Inc. was subject to allocation for New York State income tax purposes for 1973.

FINDINGS OF FACT

1. On December 22, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioner Edward H. Montray and his wife Margaret S. Montray indicating a deficiency of \$2,317.89, plus interest for the tax year 1972. On May 19, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioner Edward H.

Montray indicating a deficiency of \$1,618.39, plus interest for the tax year 1973. The total due shown on the Notice of Deficiency for 1973 was reduced by \$27.08, this amount representing the overpayment shown on petitioner's 1973 return.

2. As to 1972, petitioner claimed on a joint New York State Nonresident income tax return that he filed with his wife, Margaret S. Montray, that he worked 151 days outside New York State. Petitioner has offered no documentation to support this assertion.

3. As to 1973, petitioner claimed on his New York State Nonresident income tax return for said year that he worked 18 days in New York State and 242 days outside the state.

4. By letter dated January 29, 1973, Joc Oil USA, Inc. (hereinafter "Joc Oil") informed Mr. Montray that "your services to our company are not required any longer, effective January 29, 1973." The letter continued:

"We shall continue to pay your salary until December 21, 1973, while you are in the process of seeking other employment. In the event you are not successful in securing the same salary we will remit the difference to you until December 21, 1973."

The personnel records of Joc Oil state as follows regarding Mr. Montray: "Discharged January 29, 1973 - to be paid until December 21, 1973."

5. In a letter from Mr. Montray dated July 10, 1974 to the Department of Taxation and Finance, an attachment to Exhibit Q introduced at the formal hearing, Mr. Montray writes as follows concerning his departure from Joc Oil:

"[T]hat after my return from a business trip in Europe my employer and I had totally different concepts of how the American business should be handled and my employment was terminated but the Dutch honor an employment contract more than a business contract and I was paid until the end of 1973."

6. Until January 29, 1973, while he was still an employee of Joc Oil, petitioner claims that he worked 18 days in New York State. For the remainder

of 1973, Mr. Montray spent his time either at his residence in New Jersey or traveling to other parts of the country looking for consulting work.

7. Every two weeks, Mr. Montray would receive a check from Joc Oil which would be mailed to his home. Joc Oil did not withhold New York State tax from its payments to Mr. Montray.

8. From January 29, 1973 through the end of the year, Mr. Montray did not work in the New York office of Joc Oil. He would receive an occasional telephone call at home on matters relating to his prior involvement with Joc Oil.

CONCLUSIONS OF LAW

A. That petitioner has failed to meet the burden of proof imposed by section 689(e) of the Tax Law to show that he worked 151 days outside of New York State in 1972.

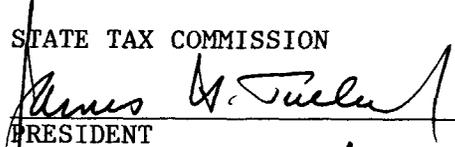
B. That the payments received by petitioner from Joc Oil during the period January 29, 1973 to December 21, 1973 constituted termination pay. These payments are subject to New York State personal income tax, in accordance with the allocation provisions of 20 NYCRR 131.18. That petitioner has failed to show that services were performed wholly outside New York or partly within and partly without New York and, therefore, said termination pay is taxable to New York in its entirety.

C. That the petitions of Edward H. Montray are denied and the notices of deficiency dated May 19, 1975 and December 22, 1975 are sustained.

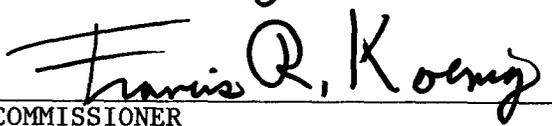
DATED: Albany, New York

MAR 21 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER