

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
HERMAN WOLF	:	DECISION
for Redetermination of a Deficiency or for Refund of	:	DTA No. 812738
Personal Income Tax under Article 22 of the Tax Law	:	
for the Year 1990.	:	

Petitioner Herman Wolf, 3939 Conshohocken Avenue, Apt. 1017, Philadelphia, Pennsylvania 19131, filed an exception to the determination of the Administrative Law Judge issued on August 17, 1995. Petitioner appeared by Frederick L. Myers, C.P.A. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Michael J. Glannon, Esq., of counsel).

The Division of Taxation filed a brief in opposition to the exception. Petitioner filed a reply brief which was received on November 3, 1995, and began the six-month period for the issuance of this decision.

Commissioner DeWitt delivered the decision of the Tax Appeals Tribunal.
Commissioners Dugan and Koenig concur.

ISSUES

I. Whether the lump-sum distribution from an Individual Retirement Account ("IRA") to petitioner, who was a nonresident of New York at the time of the distribution, was subject to New York personal income tax as New York source income.

II. Whether treating the lump-sum distribution from an IRA to a nonresident as New York source income subject to New York income tax violates the United States Constitution.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

The factual record on submission is extremely bare. Petitioner's representative, Frederick L. Myers, in a letter dated September 7, 1994 (Division of Taxation's ["Division"] Exhibit "H") to William F. Collins, the Division's former Deputy Commissioner and Counsel, wrote "please find listed below the stipulation of facts concerning Herman Wolf." However, no stipulation of facts was actually introduced into the record. Rather, a letter dated September 23, 1994 of the Division's representative, Michael J. Glannon, which transmitted "a copy of the signed submission agreement" (Division's Exhibit "A") to Mr. Myers merely noted that Mr. Myers's letter of September 7, 1994 "contains sufficient information to allow us to proceed by submission."

It is further observed that a review of the pleadings does not reveal the establishment of any facts. The petition (Division's Exhibit "F") alleged only the following "facts":

"The taxpayer, while a resident of Pennsylvania, received an IRA distribution from a New York State Payor [and New York State income tax of \$4,038.00 was paid on such distribution]."

The Division's answer (Division's Exhibit "G") denied this allegation.

Consequently, although petitioner has failed to substantiate the facts set forth in Mr. Myers's letter dated September 7, 1994, in order to have a factual context for what the parties appear to agree is basically a legal issue, the "facts" (although they can be properly viewed as allegations only) set forth in Mr. Myers's letter will be recited herein.

Mr. Myers's letter of September 7, 1994 (Division's Exhibit "H") to the Division's former counsel, William F. Collins, stated the following "facts":

"1. The petitioner worked for 30 years in the same firm. During that time he performed all kind [sic] of duties -- from sweeping the floor to shipping and receiving merchandise. First they were located in [the] Bronx, NY and the name of the firm was Baras Textile. Later the firm moved to New York [Manhattan] and the name was Baras Jersey. The location was 37 W. 20th Street, New York, NY, 10011.

"2. The IRA distributions [sic, since petitioner apparently means 'contributions'] were monies put away during petitioners [sic] employment.

"3. Work performed was done so in the State of New York.

"4. The petitioner opened up the account on his own behalf.

"5. On April 15 [presumably of 1990] the petitioner moved from Yonkers, New York to his current address in Philadelphia, PA. Prior to that time the petitioner lived in Yonkers, NY for at least twenty years.

"6. The taxpayer received a full distribution from the IRA on 12/17/90 while a full [sic] resident of the State of Pennsylvania.

"7. Mr. Wolf's last New York tax return was for the year 1990."

Petitioner filed a 1990 nonresident and part-year resident New York income tax return (Form IT-203) dated April 12, 1991 on which he reported that he moved out of New York State on April 30, 1990 and received no income from New York State sources during the nonresident period. Nonetheless, Mr. Wolf's former accountant included in petitioner's New York adjusted gross income an IRA distribution of \$69,770.00 apparently received by Mr. Wolf in late December of 1990.¹

Subsequently, by his current representative, petitioner filed a refund request dated March 6, 1992 (included in Division's Exhibit "C") noting as follows:

"Please be advised that the taxpayers [sic] enclosed return was incorrectly prepared. The taxpayer moved to Pennsylvania on April 30, 1990. In December 1990 the taxpayer received a distribution from his pension plan [sic] in the amount [of] \$69,770.

¹An "IRA Distribution Request" (included in Division's Exhibit "C") to The Bowery bank, requesting that all of petitioner's IRA accounts were to be closed, was dated December 17, 1990. This document also revealed petitioner's date of birth as July 19, 1912 so that, as of the date of the IRA distribution of \$69,770.00 in December of 1990, petitioner was 78 years old.

"The distribution was erroneously included on the New York tax return. We have enclosed a copy of the New York return, the Pennsylvania return, and the request the taxpayer filed to receive the distribution. That request was dated November 27, 1990 [sic].²

"We would appreciate a full refund of the taxes paid in error"

Petitioner then filed an amended 1990 nonresident and part-year resident New York income tax return (Form IT-203) dated July 14, 1992 on which he allocated none of his IRA distribution of \$69,770.00 to New York and claimed a refund due of \$4,038.00.

The Division, by a letter dated December 22, 1992 (Division's Exhibit "E"), designated a Notice of Disallowance by the Division, denied petitioner's refund claim for \$4,038.00 for the following reason:

"Since your IRA distribution does not qualify as a pension or annuity, it is taxable as compensation for services rendered. Your refund is limited to the tax paid with the amended return."³

Attached to petitioner's refund request dated March 6, 1992 is a photocopy of his 1990 Pennsylvania individual income tax return. Petitioner did not report his IRA distribution of \$69,770.00 as income subject to Pennsylvania income tax.

OPINION

On exception, petitioner argues that as a resident of Pennsylvania, the State of New York had no authorization or jurisdiction to tax any of the taxpayer's funds. He argues that "full faith and credit," "Pennsylvania law" and the Constitution of the United States prohibit crossing state lines to tax funds of petitioner.

²See footnote "1," which indicates that such request was dated December 17, 1990.

³The letter references a refund claim totalling \$8,427.00, of which \$4,038.00 was disallowed. A review of the amended return (Division's Exhibit "D") does not disclose that petitioner paid tax with the amended return, nor does the record include any additional information concerning the remaining portion of the refund claim of \$4,389.00 (\$8,427.00 - \$4,038.00 = \$4,389.00), which apparently was allowed by the Division.

In opposition, the Division relies on its post-hearing brief to the Administrative Law Judge in which it argued that a presumption of correctness attaches to the Division's denial of the refund which petitioner has not rebutted. The Division also argues that petitioner funded his IRA account with income from his New York employment which income would have been taxable to New York in the year earned were it not for the tax-deferred benefit of the IRA account.

Tax Law former § 631(a), as in effect for the year at issue, provided that the New York source income of a nonresident individual includes the sum of the net amount of items of income, gain, loss and deduction entering into the individual's Federal adjusted gross income which are derived from or connected with New York sources. Tax Law § 631(b)(1)(B) specifies that items of income attributable to "a business, trade, profession or occupation carried on in this state" are derived from or connected with New York sources. 20 NYCRR former 131.4(d) provided that:

"[w]here an individual formerly employed in New York State is retired from service and thereafter receives a pension or other retirement benefit attributable to his former services, the pension or retirement benefit is not taxable for New York State personal income tax purposes if the individual receiving it is a nonresident and if it constitutes an annuity Where a

pension or other retirement benefit does not constitute an annuity, it is compensation for personal services and, if the individual receiving it is a nonresident, it is taxable for New York State personal income tax purposes to the extent that the services were performed in New York State."

The Administrative Law Judge concluded that petitioner's lump-sum IRA distribution of \$69,770.00 was taxable by New York State because it was attributable to his former employment or occupation carried on in New York and, therefore, was derived from or connected with New York sources. Further, the Administrative Law Judge concluded that there was no issue concerning the allocation of the IRA distribution between New York and other states since no services were performed by petitioner outside New York. The Administrative Law Judge also concluded that because petitioner did not articulate the nature of his constitutional objection, he

failed to meet his burden of proof to show that relevant provisions of the Tax Law, as applied to him, were unconstitutional.

We agree with the conclusions contained in the determination of the Administrative Law Judge. Since petitioner has not raised any arguments that were not presented to the Administrative Law Judge and has not presented any legal authority that would vary the correctness of that determination, we affirm it for the reasons set forth therein.

We note that on January 6, 1996, Title 4 of the United States Code was amended to provide that, for amounts received subsequent to December 31, 1995, no state may impose an income tax on the retirement income of an individual who is not a resident or domiciliary of that state. Unfortunately for petitioner, that provision has no effect on the taxability of his IRA distribution for the years at issue herein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Herman Wolf is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Herman Wolf is denied; and

4. The Notice of Disallowance dated December 22, 1992 is sustained.

DATED: Troy, New York
March 7, 1996

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Donald C. DeWitt
Donald C. DeWitt
Commissioner