

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

GORDON B. SPIVACK and DOLORES O. SPIVACK

DECISION

for Redetermination of a Deficiency or for
Refund of New York State Personal Income Tax
under Article 22 of the Tax Law and New York
City Nonresident Earnings Tax under Chapter 46,
Title U of the Administrative Code of the City :
of New York for the Year 1980.

Petitioners, Gordon B. Spivack and Dolores O. Spivack, 118 Townsend
Terrace, New Haven, Connecticut 06512, filed a petition for redetermination of
a deficiency **or** for refund of New York State personal income tax under Article
22 of the Tax Law and New York City nonresident earnings tax under Chapter 46,
Title U of the Administrative Code of the City of New York for the year 1980
(File No. 52753).

A hearing was held before Allen Caplowaith, Hearing Officer, at the
offices of the State Tax Commission, Two World Trade Center, New York, New
York, on December 17, 1985 at 2:45 P.M. Petitioner Gordon B. Spivack appeared
pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass,
Esq. , of counsel) .

ISSUE

Whether petitioner Gordon B. Spivack, a nonresident of New York State, may
allocate a portion of his distributive share of partnership income to sources
without the State and City of New York, when the partnership did not **so** allocate.

FINDINGS OF FACT

1. Gordon B. Spivack and Dolores O. Spivack timely filed a joint New York

Tax) for the year 1980. On said return, Gordon B. Spivack (hereinafter "petitioner") allocated his partnership income derived from the New York law partnership of Lord, Day & Lord to sources within and without the State and City of New York. According to such return, petitioner allocated 60% of his partnership income of \$674,378.26 to New York State and City.

2. On April 6, 1984, the Audit Division issued a Statement of Audit Changes to petitioner and his wife wherein petitioner's entire distributive share from said partnership was held taxable for New York State and City purposes based on the following explanation:

"Income received by a nonresident from a New York law firm in which he is a partner is allocated to New York for personal income tax purposes on the same basis as the firm uses to allocate the distributive share of each partner. Since the New York firm of Lord, Day & Lord, of which you are a member partner, did not allocate its income, your entire distributive share from such partnership is subject to New York State personal income tax and New York City nonresident earnings tax."

3. Said statement additionally provided for a modification increasing petitioner's New York State income by his distributive share of the New York City unincorporated business tax deduction taken on the partnership return. However, this adjustment was not contested by petitioner and accordingly, is not at issue herein.

4. Based on the aforesaid Statement of Audit Changes, the Audit Division issued a Notice of Deficiency against petitioner and his wife on April 6, 1984 asserting additional New York State personal income tax of \$31,437.81, additional New York City nonresident earnings tax of \$1,743.27, plus interest of \$11,889.01, for a total due of \$45,070.09.

5. Petitioner was a partner in Lord, Day & Lord during 1980. Said partnership, which was located at 25 Broadway, New York, New York 10004, allocated 100% of its income to New York.

6. Petitioner argued that he is properly entitled to allocate a portion of his distributive share of partnership income to sources without the State and City of New York since the principal factors used by the partnership in determining its distribution of profits were business generated and billable time.

7. During 1980 petitioner practiced antitrust law on a national basis. Over 40% of the amounts he collected from his clients for which the partnership gave him credit in determining his 1980 distribution was for work performed without New York for clients located without New York. Petitioner argued that his reported allocation was proper since it included the income attributable to services rendered in New York for clients located without New York as well as the income attributable to services rendered without New York for clients located within New York.

CONCLUSIONS OF LAW

A. That pursuant to section 637(b)(2) of the Tax Law, a nonresident partner may not allocate "... as income or gain from sources outside New York, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside New York to partnership income or gain from all sources...". Such income is allocated to New York sources on the same basis as the firm uses to allocate the distributive share of each partner. (See Matter of Thomas M. Debevoise et al. v. State Tax Commission, 52 A.D.2d 1023, 383 N.Y.S.2d 698.) Accordingly, since the partner-

allocate any portion of his distributive share of income from Lord, Day & Lord to sources without New York State and City.


B. That the petition of Gordon B. Spivack and Dolores O. Spivack is denied and the Notice of Deficiency dated April 6, 1984 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

APR 04 1986


PRESIDENT


COMMISSIONER


COMMISSIONER