

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

Income Tax Determinations

A-2

BUREAU OF LAW
MEMORANDUM

McElhannon, Raymond J.

TO: Commissioners Murphy,
Macduff and Conlon

FROM: Vincent P. Molineaux, Hearing Officer

SUBJECT: In the Matter of the Application of
McElhannon, Raymond J.
for Revision or Refund of Personal
Income Tax under Article 16 of the
Tax Law for the Year 1959

The taxpayer, Raymond J. McElhannon, is an attorney residing in the State of Connecticut who conducts the practice of law with a firm at 225 Broadway, New York City.

The questions at issue are the disallowance of claims for contributions of \$1,400, professional, entertainment and nonreimbursable travel expenses of \$4,000 from the amount of \$9,400 claimed, and allocation of \$16,920.18 as income earned outside of the State.

The file was referred to the New York office for informal conference, and the taxpayer failed to appear on three scheduled dates without explanation.

The case was scheduled for formal hearing. Taxpayer failed to appear. Telephone attempts to communicate went unanswered, and taxpayer failed to reply to a letter stating that if no response was received within 30 days, waiver of hearing would be assumed.

With respect to the contributions and professional, entertainment and travel expenses, no substantiation was offered.

With respect to the claimed allocation of \$16,920.18, taxpayer submitted diary sheets showing days worked in Columbus, Ohio in the course of which he claims to have rented office space including conference rooms and rooms for stenographic help. He also claims to have spent considerable time in Europe on other litigation requiring office space and help. Taxpayer did not claim to be admitted to the bar in either Ohio or England or to carry on a regular practice in either of those places.

Taxpayer's income as disclosed by his return was a distributive share of income of the partnership with its office in New York. For taxpayer to claim allocation it would be

necessary, which he has not done, to show allocation of the partnership income based upon maintenance by the partnership of a regular place or places for the practice of law outside of the State which is not indicated anywhere in the record.

Furthermore, it has been held that a nonresident licensed to practice law in New York and engaged in the practice of law in New York City may not apportion income derived from practice before Federal courts and commissions outside of the State. Services outside are incident to the practice he maintained in New York. Carpenter v. Chagnon, (1950), 276 A.D. 634, leave to appeal denied 277 A.D. 933.

Based upon the foregoing, I recommend that the determination of the Tax Commission in this matter, affirming the denial of the application for revision, be substantially in the form submitted herewith.

/s/

VINCENT P. MOLINEAUX
Hearing Officer

July 25, 1967
VPM:bdg
Enc. *OK M.S.*
AH

7-27-67

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION
OF
RAYMOND J. McELHANNON
FOR REVISION OR REFUND OF PERSONAL INCOME
TAX UNDER ARTICLE 16 OF THE TAX LAW FOR
THE YEAR 1959

The taxpayer, Raymond J. McElhannon, having filed an application for revision or refund of personal income tax for the year 1959 and a hearing having been scheduled thereon at the office of the State Tax Commission, 80 Centre Street, New York, New York, for the second day of March 1967, and no appearance having been made on behalf of the taxpayer, and the documents on file having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer is a resident of Connecticut and is engaged in the practice of law as a member of a firm located at 225 Broadway, New York City.

(2) That the taxpayer paid an estimated tax of \$4,000 for the year 1959 and filed a nonresident return of income which showed tax due of \$2,824.14 and claimed a refund of \$1,175.86.

(3) That on January 3, 1961 the State Tax Commission issued Assessment No. B 827695 for the year 1959 in the amount of \$1,056.16 based upon disallowance of contributions claimed in the amount of \$1,400 as unsubstantiated, disallowance of \$4,000 of \$9,400 claimed as professional and travel expense, as excessive.

(4) That also disallowed was taxpayer's claim for allocation of income of \$16,980.18 outside of New York for the year 1959 as based upon schedules showing days worked in New York, 801 and days worked outside of New York, 69 and supported by photocopies of diary pages for 1959 disclosing days spent in Columbus, Ohio and in England on

litigation in the course of which the taxpayer was required to rent office space including conference rooms and rooms for stenographic help.

(5) Taxpayer did not claim to have been admitted to practice law in Ohio or in England.

(6) That a hearing was scheduled for March 2, 1967 at 1:30 p.m. at 50 Centre Street, New York, New York and taxpayer was duly notified thereof.

(7) The taxpayer failed to appear at said hearing or to present evidence or arguments to support the application for revision.

Based upon the foregoing findings and all of the evidence in the file, the State Tax Commission hereby

DETERMINES:

(A) That the claims for professional and entertainment expenses in the amount of \$4,000 and contributions of \$1,400 were properly disallowed as unsubstantiated and an exemption of \$3,600 was properly credited.

(B) That the claim for allocation of income outside of New York was properly disallowed.

(C) That Assessment No. B 827695 was correctly issued.

(D) That the denial of the application for revision is affirmed.

AND IT IS SO ORDERED

Dated: Albany, New York this 9th day of August, 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

JAMES R. MACDUFF

Commissioner

/s/

WALTER MACLYN CONLON

Commissioner