Income Tax Determin.
Aron, Morris A-Z

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of MORRIS ARON For a Redetermination of a Deficiency or a Refund of PERSONAL INCOME Taxes under Article(s) 16&22 of the Tax Law for the year(s) 1959 & 1961	Affidavit of Mailing of Notice of Decision, by Registered Mail

State of New York
County of Albany

Patricia Whitman , being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 5th day of June , 1969, she served the within Notice of Decisions(or of "Determination") by registered mail upon Morris Aron

the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:
Mr. Morris Aron, 60 Strawberry Hill Ave., South Norwalk, Conn.

and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

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
5th day of June , 1969.
Grace E. Pritchard

Patricia Whitman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of MORRIS ARON For a Redetermination of a Deficiency or a Refund of PERSONAL INCOME Taxes under Article(s) 22&16 of the Tax Law for the year(s) 1959 & 1961	Affidavit of Mailing of Notice of Decision, by Registered Mail

State of New York
County of Albany

Patricia Whitman , being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 5th day of June , 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon Mr. Edward B. Popper, representative for the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:
Mr. Edward B. Popper, 79 Madison Avenue, New York, NY 10016

and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

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
5th day of June , 1969.

Patricia Whitman

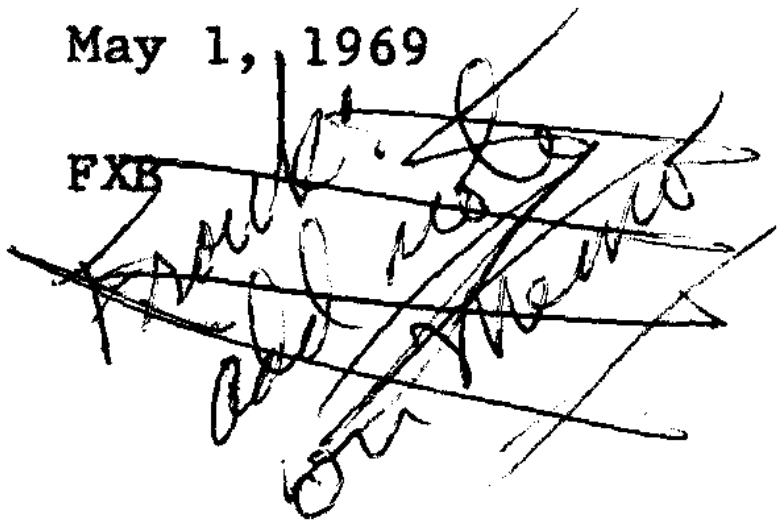
Grace E. Pritchard

To Mr. Edward Rook

Prepared decision to be submitted to the State Tax Commission.
(Associated memo of Law dates from 1964)

May 1, 1969

FXB



From Francis X. Boylan

L 9 (6-65)

Income Tax Determin. A-Z

BUREAU OF LAW

MEMORANDUM

Aron, Morris

TO:

Commissioners Murphy, Palestin and Macduff

FROM:

Francis X. Boylan, Hearing Officer

SUBJECT:

Morris Aron, application for revision or refund of Personal Income Taxes under Article 16 of the Tax Law for the Year 1959 and a petition for redetermination of a deficiency of Personal Income Taxes under Article 22 of the Tax Law for the Year 1961.

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y., on May 12, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The question in this case is whether the taxpayer, a nonresident, lawfully could allocate only a portion of his income from M. Aron Corporation of New York, New York to this State, and whether the allocation of 50% to New York claimed on his returns was a large enough allocation. As to the year 1959, the allocation was changed to 75%. His 1960 return which also disclosed an allocation of 50% was accepted as filed and no assessment was issued. In 1961, his income was held to be 100% taxable by reason of failure by the taxpayer to supply required information to support the allocation claimed.

The assessment for the year 1959 also corrected an error in the computation of allowed deductions, and disallowed a portion of contributions claimed. The taxpayer's application for refund for the year 1959 does not question the recomputation or the disallowance, but is solely limited to the question of allocation within and without the State of New York. The proposed determination holds that the 50% allocation claimed by the taxpayer for the years 1959 and 1961 should be allowed. The 1961 assessment is, therefore, cancelled and the 1959 assessment is restated accordingly. No complete cancellation results for such year by virtue of the aforesaid recomputation and partial disallowance of contributions.

The taxpayer, a nonresident, resided in South Norwalk, Connecticut. He was the president of M. Aron Corporation of New York, New York, and held the same office in Corday, Inc., of South Norwalk, Connecticut. Both were close corporations controlled by the taxpayer who, with his wife, owned all the shares of both. Corday Inc., was not a subsidiary of M. Aron Corporation but was separately incorporated for reasons said to be related to labor contracts. The two corporations, however, performed functions in the same business of the manufacture and sale of ties, and M. Aron Corporation in New York served as the sales office and showcase for the merchandise. At Corday Inc., the textiles or

other goods purchased by M. Aron Corporation were cut and tailored and Corday Inc., contracted out the finishing of the ties. The inventory of unfinished and finished goods was kept at the premises of Corday Inc.

According to the testimony, Mr. Aron spent two days a week in M. Aron Corporation's offices in New York, New York, and this time reportedly was devoted entirely to sales and other functions of M. Aron Corporation. Reportedly, Mr. Aron worked a six-day week including Saturdays, and his testimony and that of his accountant, supported also by a number of affidavits, was to the effect that the time that he spent at the premises of Corday Inc., in Connecticut, that is, four days a week, was devoted at least one-half to the functions of M. Aron Corporation. In support of this the taxpayer explained that the functions of purchasing goods, and of making up the components of customers' orders at an average price or different prices were done under his personal direction and further, he evaluated the resale price to be put on merchandise returned from customers, all done at Connecticut. The taxpayer stated that the presence of the stocks in inventory at Corday Inc., and the fact that key personnel whom he consulted on his decisions on purchasing and selling were situated there was the reason why the work was done at that location.

In his 1959 return the taxpayer claimed an apportionment according to formula of 148/296 days of $30,000 allocable income to Connecticut or $15,000 and the same to New York. In 1961 he claimed 147/294 days of $30,000, or $15,000 earned in New York.

It may be noticed that if the taxpayer worked only two days out of six in New York the allocation of 147 days out of 294, for example, in 1961 is not literally correct since he only worked 98 days out of 294 in New York. However, the 196 days that he worked on a calendar year basis in Connecticut were only one-half days and the prescribed formula does not lend itself well to this situation where the days in New York have a different value than the days worked out-of-state. Reducing the 196 Connecticut days by one-half to 98, we have a total of full-time working days in both States of 196, of which 98 are apportionable to New York. Consequently, the end result of a one-half allocation to New York was right, assuming that he was entitled to allocate the Connecticut time on the basis that was set forth in his testimony at the hearing as reported above.

Under Article 16 governing the 1959 return, Tax Law section 351 provides in part for a tax on the net income of a nonresident from every "business * * * or occupation carried on in this state." The pertinent regulation under Article 16 (20NYCRR 263.2) provides that in the case of employees, including corporate officers, an allocation is to be made in proportion to the number of the days worked in New York to the total days worked both within and without the State.

As to 1961, Tax Law section 632 of Article 22 provides for an allocation of income from an "occupation" "carried on" partly within and partly without the State as defined by regulation to be allocated in accordance with regulations. In the 1961 return form, the formula for apportionment is explicitly set forth at Schedule A. The new "proposed personal income tax regulation" under Article 22 states that any allowance for days worked outside the State must be based upon the performance of services required out of necessity and not as a matter of convenience (proposed regulation 131.16).

Although the regulation under Article 16, for 1959 does not explicitly require any showing that the work done outside the State was done out of reason of business necessity rather than of convenience that requirement now explicitly stated in the proposed regulation under Article 22, was no doubt implicit also in the regulation under Article 16. Of course, the ordinary employee and even some corporate officers sufficiently show the necessity of doing the work where it was performed outside the State by establishing that the employer assigned them to that location.

It would seem, however, that the occupation carried on by the president of a close corporation would be in principle comparable to a business or profession carried on by the owner of an unincorporated business or the practitioner of a profession and in those cases it is clear that the work done outside the State must be done for adequate reasons related to the business or profession. (Tremble v. Bregalini, 1961, 15 A D 2d 208; Carpenter v. Chapman, 1950, 276 App. Div. 634)

The question of whether a business or occupation is carried on outside the state, then, is a question of whether there is a "situs of employment" there and it is not enough that the employee chose to do the work outside the State for reasons not directly related to the business or for convenience where the work could as well be done at the headquarters of the business. Here, however, the taxpayer makes out an adequate

showing that there was a sufficient business reason for performing the services in Connecticut and that that location was at least a preferable place to carry out the duties of purchasing the textiles for M. Aron Corporation and for determining the make-up of the orders taken and the prices to be quoted. If the services under the law and regulation are necessarily performed outside the State when there is a sufficient business reason for performing them there, even if short of absolute or compelling necessity, it would appear that the taxpayer was entitled to the allocation that he claimed.

It should be pointed out that Corday Inc., had a continuing close connection with M. Aron Corporation and in reality was part of the same business so that in these circumstances it should be held to be a situs of the taxpayer's employment outside the State. It is not comparable to the out-of-state locations of clients of professional persons practicing in New York whose various offices outside the State, visited only from time to time, are not a situs of employment outside the State. (Compare Trumble, supra) I believe that the taxpayer made a sufficient showing that the work performed outside the State was necessarily done there within the meaning intended and that the determination was therefore right.

It may be noted that the taxpayer made adequate endeavors to submit proof of the allocation that he claimed at least after the 1961 assessment was levied. No doubt he had failed to supply initially the supporting statement with the Return that is required.

For the reasons stated above, I recommend that the decision of the Tax Commission in this matter be substantially in the form submitted herewith.

Kindly return the file after disposition.

/s/ FRANCIS X. BOYLAN
Hearing Officer

FXB:lb
Enc.

/s/ MARTIN SCHAPIRO
Approved

Approved

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION

OF

MORRIS ARON

FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF TAX LAW FOR THE YEAR 1959

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The State Tax Commission having assessed additional normal income taxes on the income of the taxpayer under Article 16 of Tax Law for the year 1959 by notice of additional assessment, and the taxpayer having filed application for revision or refund related to such additional assessment and such application having been denied, and a hearing having been held on May 12, 1964 at the offices of the New York State Department of Taxation and Finance, 80 Centre Street, New York, New York, before Francis X. Boylan, Hearing Officer, and the taxpayer having appeared in person and Edward B. Popper, C.P.A., of New York, N. Y., having been present, and the record having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) By notice of additional assessment No. B975655 dated August 7, 1961, the State Tax Commission assessed additional normal income taxes for the year 1959 in the amount of $191.60. Such additional assessment resulted in part from the allocation to New York State of 75% of the total allocable compensation of $30,000 reported by the taxpayer, and business expenses were reallocated accordingly. Certain contributions claimed were disallowed. The taxpayer had claimed that $15,000

of allocable earnings of $30,000 were apportionable to New York and taxable. By application for revision or refund which was denied, the taxpayer raised the issue of the proper apportionment of his earned income within and without the State.

(2) The taxpayer, a nonresident of this State and a resident of South Norwalk, Connecticut, was the president of M. Aron Corporation of New York, New York, and was president also of Corday, Inc., of South Norwalk, Connecticut, a separately incorporated corporation, not a subsidiary of M. Aron Corporation. Both corporations were closed corporations controlled by the taxpayer.

(3) M. Aron Corporation and Corday, Inc. had close business relations through the common ownership by the taxpayer. M. Aron Corporation served as a sales agency for the sale of ties; the cutting of these ties and the contracting out of the actual manufacture of them was done by Corday, Inc., and inventories of stock were stored at its premises in Connecticut.

(4) The taxpayer in the year under consideration was actually employed at the New York offices two days a week out of a six-day week, working practically full time on those days for the M. Aron Corporation. He worked four days a week on the premises of Corday, Inc. in Connecticut but devoted part of his time, found to be one-half thereof, to work of the M. Aron Corporation.

(5) The taxpayer as president of M. Aron Corporation personally directed at Connecticut but in behalf of M. Aron Corporation the functions of purchasing new stocks of textiles and of assembling orders for customers at quoted prices. An adequate business reason existed for the taxpayer's performing this work in Connecticut, rather than at New York, as it is

found, in that inventories of stock located there were a factor to be considered by him, and certain personnel of Corday, Inc. were consulted with there by the taxpayer in connection with his carrying out these and other duties on behalf of M. Aron Corporation.

Upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

D E T E R M I N E S:

(A) That the income of the taxpayer, a nonresident, earned in the year under consideration, 1959, from the M. Aron Corporation of New York, New York, was earned as a corporate officer, as president of the said corporation, in an occupation carried on partly in New York to the extent of one-half of the total work performed by him for the said corporation both within and without the State; and pursuant to the provisions of Tax Law section 351 and relating regulation (20 NYCRR 263.2), such income was properly apportionable as being subject to income tax of the State of New York to the extent of one-half thereof.

(B) That the additional taxes assessed by notice of additional assessment No. B975655 dated August 7, 1961 for the year 1959 are hereby restated in full as follows:

Total compensation		$30,000.00
Allocation to New York State-50%		$15,000.00
Business expenses at 50%	$260.00	
Contributions allowable	544.00	[804.00]
Adjusted net income		$14,196.00
Exemptions		[3,000.00]
Taxable balance		$11,196.00
Normal tax	$535.68	
Statutory credit	[25.00]	
Normal tax due	$510.68	
Tax withheld	1,000.00	
Overpayment	$489.32	

The said amount of $489.32 is to be refunded to the taxpayer and it is so ORDERED.

(C) That the taxpayer's related application for revision and review as to the year 1959 is granted to the extent above indicated in paragraph (B), which modifies the amount of income apportioned to New York as earned therein and taxable.

DATED: Albany, New York, this 2nd day of June, 1969.

STATE TAX COMMISSION

President

Commissioner

Commissioner