

STATE OF NEW YORK
STATE TAX COMMISSION

Sweeney, Thomas
Personal Income
Article 16
1971

In the Matter of the Petition

of

THOMAS W. SWEENEY

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1954, 1955
and 1956.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Linda Wilson, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 2nd day of March, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon THOMAS W.

SWEENEY (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Thomas W. Sweeney
22 Sunset Terrace
Maplewood, New Jersey

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

2nd day of March, 1971.

Matthew Fumero

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS W. SWEENEY

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 2nd day of March, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon ERWIN B.

HALLETT, ESQ. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Erwin B. Hallett, Esq.
120 Broadway *61 Broadway*
New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

2nd day of March, 1971.

Maitha Fuxaro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
THOMAS W. SWEENEY	:	DETERMINATION
for Revision or Refund of Personal	:	
Income Taxes under Article 16 for	:	
the years 1954, 1955 and 1956	:	

Thomas W. Sweeney applied for a revision or for refund of personal income taxes under Article 16 of the Tax Law for the years 1954, 1955 and 1956. A formal hearing was held before Solomon Sies, Hearing Officer, in the offices of the State Tax Commission, 80 Centre Street, New York, New York on May 27, 1964. The applicant appeared in person and was represented by Erwin B. Hallett, Esq.

FINDINGS OF FACT

1. The issue involved with respect to the years 1954, 1955 and 1956 herein is: (A) Whether the sub-brokerage commissions received by the taxpayer from H. Mosenthal & Sons, Inc. are income subject to New York State income tax on the same basis as his other compensation received from H. Mosenthal & Son, Inc.

2. During the years 1954, 1955 and 1956, the taxpayer was employed by H. Mosenthal & Sons, Inc. general insurance brokers having its sole place of business in New York City for which he received a salary and bonus at the end of each year. The taxpayer owned a 20% stock interest in H. Mosenthal & Son, Inc. and was the treasurer. His father, Thomas M. Sweeney was Vice President and a major stockholder of this corporation.

The taxpayer entered into an oral agreement with an insurance company whereby he was to be a insurance sub-broker and H. Mosenthal & Sons, Inc. was to be broker of record, servicing insurance risks throughout the United States. H. Mosenthal & Sons, Inc. was to receive 50% of the commissions. The taxpayer was to receive a like commission and H. Mosenthal & Sons, Inc. was to furnish the facilities of its office. The taxpayer's share of commissions for the years 1954, 1955 and 1956 amounted to \$18,717.72, \$27,709.63 and \$18,082.82 respectively.

3. Notices of additional assessments for the years 1954, 1955 and 1956 numbered B473772, 473773 were issued on September 22, 1958 and an assessment numbered B534756 was issued on January 23, 1959. The assessments applied the allocation formula of days worked within the State of New York to total number of days worked. The amounts totaled \$1,083.13 in 1954, \$1,131.51 in 1955, and \$843.73 in 1956.

DETERMINATION

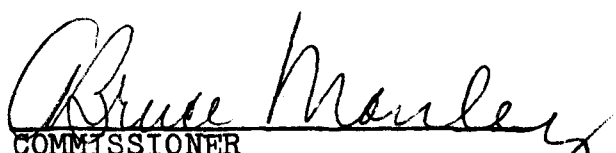
A. The entire amount received from H. Mosenthal & Sons, Inc., a New York corporation, represents income as an employee, and therefore such total income received from the corporation is subject to the personal income tax on the allocated basis.


B. The notices of assessment are sustained and the petitions are denied.

DATED: Albany, New York
February 26, 1971

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER